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REVIEW OF THE 10-PERCENT SET-ASIDE PROGRAM (SECTION 105(f)) OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982

(APRIL 17, 1985—ALASKA, FLORIDA, LOUISIANA, OKLAHOMA)
(JUNE 5, 1985—DEPARTMENT OF TRANSPORTATION)

COMPLETED

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON SBA AND SBIC AUTHORITY,
MINORITY ENTERPRISE AND GENERAL
SMALL BUSINESS PROBLEMS

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

WASHINGTON, DC, APRIL 17 AND JUNE 5, 1985

Printed for the use of the Committee on Small Business

ORIGINAL

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REVIEW OF THE 10-PERCENT SET-ASIDE PROGRAM (SECTION 105(F)) OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982

WEDNESDAY, APRIL 17, 1985

House of Representatives, Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems, Committee on Small Business,

Washington, DC.

The subcommittee met, pursuant to notice at 9 a.m., in room 2359-A, Rayburn House Office Building, Hon. Parren J. Mitchell (chairman of the subcommittee) presiding.

OPENING STATEMENT OF CHAIRMAN MITCHELL

Mr. Mitchell. Good morning.

The hearing will now come to order.

Today we are conducting the second in a series of oversight hearings on the Disadvantaged Business Enterprise Program of the Federal Highway Administration. This falls under the purview of our subcommittee.

We're focusing specifically on section 105(f) that mandates that not less than 10 percent of Federal funds paid to prime and subcontractors for transit and highway improvement projects be expended with eligible small, disadvantaged businesses, or DBE's. This is strictly within the purview of our concern in the full committee and in this subcommittee.

This Minority Business Program is of paramount importance—in my opinion, it's of paramount importance to minority business at a very difficult juncture in America's history.

More and more, we see a retreat on Federal and State efforts on behalf of minority businesses, and it's most important that we not let that retreat take place. One way of doing it is to have rigorous oversight hearings to determine that the law is being carried out.

Certainly, there are problems with this program. There are problems with General Dynamics; there are problems with General Electric; there are problems with everything that goes on.

So, our job is to focus in on the pluses and the minuses, and, where there are problems, we need to do whatever we can to ameliorate—really, eliminate those problems.

Some of the concerns that I have are reporting methods that are being used for measuring DBE participation in the program. I made it very clear at the first hearing that a commitment to a DBE is not acceptable in terms of complying with the law.

When the cash on the barrel is paid, that's when DBE participation should be counted. It is absolutely unacceptable to this chairman to promise someone that they will be awarded subcontracts at the end of the program and then count that participation now.

We have recommended to the Department of Transportation and to the States many, many changes in the way they are reporting progress in terms of implementing this program.

We have monitored, and will continue to monitor, all of the States. I would hope that by the end of this first session of Congress we will have covered at least 30 States. I think we can do that.

Today, we have invited as witnesses State transportation officials from Alaska, Oklahoma, Louisiana, and Florida. We will also receive testimony from the National Indian Contractors' Association, the National Hispanic Association of Construction Enterprises, and the National Association of Minority Contractors.

I am disturbed that Mr. Barnhart, the representative from the U.S. Department of Transportation, could not be with us because of a conflict in scheduling. I want to hear from him, and therefore we will reschedule his appearance in the very near future.

I will start out now by saying I thank all of the witnesses who have taken time to be with us today. Other members of the subcommittee will be joining us in a very few moments.

Also, I want to take this opportunity to thank all of the staff—minority and majority staff people—who have worked very hard. It's not easy to put on these hearings. You have to go to the States and spend some time there, and then come back and correlate what you've found, discuss it, and then maybe go back to the States. So, to the staff—I thank all of you for the very hard work that you've done.

Congressman Addabbo, who is a member of this subcommittee, cannot be with us. He's on the House Appropriations Committee. He has asked that I submit a copy of his opening statement for the record.

Without objection, the opening statement of Congressman Addabbo is submitted for the record.

Opening Statement of Hon. Joseph P Addabbo, a Representative in Congress From the State of New York

Mr. Chairman, I commend you for your unyielding efforts to aggressively monitor the implementation of the 10 percent MBE Set-Aside Program under the Surface Transportation Act of 1982. If implemented properly, the Set-Aside Program can effectively increase minority business participation in construction and transportation related projects, an area that has been traditionally predominated by majority firms.

During the last session of Congress the subcommittee was apprised of a number of problems that plagued the success of the MBE Set-Aside Program. Specifically, the problems were: Bonding barriers; lack of management and technical assistance; faulty reporting procedures; lack of procurement outreach; and overall lack of enforcement by some States.

Although the Department of Transportation will not present testimony today, I hope that since our last hearing they have directed the State Transportation Departments to take appropriate corrective action to overcome these problems so that we may effectively promote the economic development of the minority business community.

Mr. MITCHELL. Let me say before we start calling up the witnesses, in most cases we have received copies of your testimony. Therefore, it will not—I repeat—it will not be necessary for you to read your testimony in its entirety.

What you must do is go through and select the most salient points from your testimony, and we will then ask questions.

I said in most cases testimony has been received. In one instance, we received a voluminous package of material, all background stuff but really no testimony, which I found a little distressing, but we'll get that straightened out.

Our first witness is Pat Borden, the civil rights coordinator for the Alaska Department of Transportation.

Ms. Borden, thank you very much for being here. Please go right ahead.

TESTIMONY OF PAT BORDEN, CIVIL RIGHTS COORDINATOR, ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES, ACCOMPANIED BY WILLIE J. SYKES, VICE PRESIDENT, WILSYK ALASKA, INC., EX-DIRECTOR, SMALL BUSINESS, STATE OF ALASKA

Ms. BORDEN. Mr. Chairman and members of the subcommittee, my name is Pat Borden, and I'm presenting this testimony on behalf of Governor Sheffield and the Alaska Department of Transportation and Public Facilities. We appreciate the opportunity to appear here today.

Alaska was able to meet or exceed its DBE goal for both 1983 and 1984. In fiscal year 1983, our DBE participation was $7,335,815, which is 23.4 percent of the contract awards. DBE participation on projects awarded in fiscal year 1984 was $14,061,658, which is 10.4 percent. The figure for fiscal year 1984 is anticipated to reach $14,949,927, or 11 percent, by the end of this construction season.

Since we believe that the intent of a DBE Program is to ensure that the money those goals represent actually reaches the legitimate DBE firms, not just to achieve the numbers, the Alaska Department of Transportation works hard to prevent the inclusion of fronts and to facilitate the widest possible participation.

Alaska is in the unusual position of having several large minority-owned corporations which are DBE and which bid as prime contractors on Surface Transportation Assistance Act funded projects. Between 1982 and 1984, the majority of the DBE participation was accomplished by these prime contractors.

In 1983, the department decided to place emphasis on subcontracting in an effort to provide more opportunity for smaller contractors to participate. In June 1984, the department gained approval from FHWA for implementation of new contract specifications. These specifications provide financial incentives to prime contractors who exceed projected goals through the use of DBE subcontractors. In addition, the specifications provide a disincentive in the form of liquidated damages which are assessed if a contractor fails to achieve sufficient DBE participation.

All projects with cost estimates of $50,000 or greater are reviewed by the civil rights coordinator to determine the appropriate goal for that project. At the same time that goals are determined, the bonus percentage and maximum bonus amount are set. Even on projects where zero goals are set, bonuses are established and will be paid if items are subcontracted to DBE's.

Alaska has an assertive and thorough certification process. We currently have 242 certified DBE's, and we are denying approximately 15 percent of applications for DBE status and 25 percent of applications for DWBE status.

We have recently revised our application forms to highlight areas we have frequently encountered when dealing with fronts. The validation interview, however, remains the most important part of the process.

The normal processing time for straightforward application is 4 to 6 weeks. The processing time can be significantly greater if the DBE is slow to provide additional information or if the applicant firm has a complicated corporate structure.

We do make special efforts to expedite applications for firms who have contracts pending.

Alaska's compliance process begins prior to contract award. If the low bidder does not list DBE participation at least equal to the amount of the goal, the bidder must demonstrate acceptable good faith effort.

Alaska has become very strict in its evaluation of good faith effort. A low bidder who fails to meet the goal and fails to provide documentation of adequate good faith effort will have his bid rejected.

Once a contract is awarded, we require that each subcontract be approved in writing prior to the subcontractor beginning work.

If the subcontract with a non-DBE firm is submitted for an item listed by the prime contractor for DBE participation, the subcontract will not be approved until the contractor has demonstrated how he will meet the DBE goal without this item.

As each DBE begins work on a project, the resident engineer observes the supervision of the work, the equipment being used, et cetera, and talks with the employees about their work. In this way, he can determine whether the DBE is actually performing and supervising the work.

The Civil Rights Office is involved throughout the contract process. The tracking of projects begins at the point where goals are set. Information about the project is entered into a computer-based file system on an ongoing basis, and we keep track of both commitment and actual subcontract amounts.

We work closely with regional staff to alert each other of irregularities. The Civil Rights Office also receives information from the public regarding fronts and investigates to determine whether the firms in question are fronts.

DBE's in Alaska and the Alaska Department of Transportation have a unique barrier with which to deal. It is the sheer size of our State. Alaska covers 570,000 square miles and, according to the 1980 census, has 401,000 people. That is a population density of .7. For comparison, the population density of the United States is 64, and the next least dense State is 4.9, which is Wyoming.

Because of our geographic proportions, most of the functions within the Alaska Department of Transportation have been regionalized. Regional offices are located in Anchorage, Fairbanks, and Juneau.

To give you an idea of the proportions, Anchorage is 571 air miles northwest of Juneau, and Fairbanks is 261 air miles north of Anchorage. The driving distance between Anchorage and Fairbanks is 358 miles.

Mr. **Mitchell**. I've been to Alaska at least twice.

Ms. **Borden**. It is very difficult for a firm located in Anchorage to bid on an STAA-funded project located in southeast Alaska. Besides having to transport equipment over 600 miles of road, some of which is through the Yukon Territory, the equipment would then have to be loaded on to a ferry or barge at Haines or Skagway for shipment to the community in which the project is located.

Providing adequate and convenient technical assistance to DBE's is an ongoing problem. Until this year, we were only able to fund one assistance center, which was located in Anchorage. The DBE's in the remainder of the State were served on an itinerant basis. This spring, we opened centers in Juneau and Fairbanks and were, for the first time, able to provide adequate levels of services to firms in these communities.

With the recently announced 43 percent cut in FHWA supportive services funding for Alaska, we are faced with decreasing technical assistance again. We see this as a major problem, for technical assistance is essential to increasing the participation of small firms.

On behalf of Governor Sheffield, I want to thank you for this opportunity to testify on a matter of great importance to his administration, and I would be pleased to answer any questions which you might have.

[Ms. Borden's prepared statement follows:]

Prepared Statement of Pat Borden, Civil Rights Coordinator, Alaska Department of Transportation and Public Facilities

Mr. Chairman and Members of the Subcommittee: My name is Pat Borden, and I am presenting this testimony on behalf of Governor Sheffield and the Alaska Department of Transportation and Public Facilities. We appreciate the opportunity to appear here today.

Alaska has been able to meet or exceed its Disadvantaged Business Enterprise (DBE) goal in both 1983 and 1984. In FY83 our DBE participation was $7,335,815, which is 23.4 % of contract awards. DBE participation on projects awarded in FY84 is $14,061,658, which is 10.4%. The figure for FY84 is anticipated to reach $14,949,927, or 11%, by the end of this construction season.

I will now address your specific questions in the order in which they were asked in your letter of February 22, 1985:

1. Our certification process basically follows 49 CFR, Part 23. Applications from Anchorage and the surrounding area are processed by a certification officer stationed in the Anchorage regional office. Applications from other portions of the State or from other states are processed in the Headquarters Office, which is located in Juneau. Potential DBEs can pick up application forms in Juneau, Anchorage, Fairbanks, or Nome or request that they be mailed.

   Applications are reviewed for completeness within three working days of their receipt, and missing information or clarification is requested by phone. Once all information is received, a validation interview is scheduled. This interview is conducted at the applicant's place of business whenever possible. When the firm is not located within driving distance of Anchorage or Juneau, the validation interview is conducted via telephone. The purposes of the interview are threefold:

1. To verify the information contained in the application.
2. To learn more about the capabilities and potential supportive services needs of firms.
3. To gain a sense of the level of expertise and control shown by the DBE owner.

Based on the application and interview, the certification officer prepares a summary of the application. This is reviewed by the Civil Rights Coordinator for consistency and completeness prior to approval for the issuance of a determination letter. If the Coordinator finds problems with the summary, she will require the certification officer to make the appropriate changes or additions prior to issuing the decision. The normal processing time for a straightforward application is four to six weeks. The processing time can be significantly greater if the DBE is slow to provide additional information or if the applicant firm has a complicated corporate structure.

2. Alaska is in the unusual position of having several large minority-owned corporations which are DBEs and which bid as prime contractors on Surface Transportation Assistance Act (STAA) funded projects. Between 1982 and 1984, the majority of the DBE participation was accomplished by these prime contractors.

In 1983, the Alaska Department of Transportation and Public Facilities (DOTPF) decided to place emphasis on subcontracting in an effort to provide more opportunity for smaller contractors to participate. In June, 1984, the Department gained approval from FHWA for implementation of new contract specifications. These specifications provide financial incentives to prime contractors who exceed project goals through the use of DBE subcontractors. In addition, the stipulations provide for the assessment of liquidated damages for failing to utilize sufficient DBE participation.

The process of insuring compliance with Section 105(f) begins with the setting of project goals. All projects with cost estimates of $50,000 or greater are reviewed by the Civil Rights Coordinator to determine the appropriate goal for that project. Goals vary based on the size, location, and type of project, and the availability of DBEs to perform the work. For instance, a small pavement overlay project in an area with few DBEs would be assigned a lower goal than would the extension of an expressway in Anchorage.

At the same time that goals are determined, a bonus percentage and maximum bonus amount are set. Even on projects where zero goals are set, bonuses are established and will be paid if items are subcontracted to DBEs.

Generally, STAA-funded projects carry DBE goals of between 7½% and 15%, with bonus provisions of 5% of DBE subcontracting which exceeds the goal up to a maximum of 2% of the award amount. (Example: On a $1,000,000 project with a 10% DBE goal, a bonus of 5% would be paid on all DBE subcontracting in excess of $100,000. The maximum amount of bonus that would be paid is $20,000.) Since goals are set based on the anticipated availability of DBEs, we expect contractors to be able to meet the goals that are established.

Within 15 days of the notice of intent to award, the low bidder must submit a list of certified DBEs which the bidder intends to use. This list includes the item of work to be done and the amount of money to be paid to the DBEs. The list of proposed utilization is carefully reviewed to assure that the listed firms are being asked to perform commerically useful work in accordance with common industry practice. In addition, the type of work and subcontract size are checked against the DBE's statement of capabilities to determine the likelihood of its ability to perform the work. Contractors are asked to justify any unusual utilization.

If the low bidder does not list DBE participation at least equal to the amount of the goal, the bidder must demonstrate acceptable good faith effort. DOT&PF has become strict in its evaluation of good faith efforts. The low bidder must document that it has solicited bids from all DBEs which are listed in the Department's directory as interested in that type of work in the area where the project is located. If the contractor received quotes from DBEs but did not use the firms, his reasons for not accepting goals submitted by DBEs are carefully reviewed. A low bidder which fails to meet the goals and fails to provide documentation of adequate good faith effort will have his bid rejected.

We require that each subcontract be approved in writing prior to the subcontractor beginning work. If a subcontract with a non-DBE firm is submitted for an item listed by the prime contractor for DBE participation, the subcontract will not be approved until the contractor has demonstrated how he will meet the DBE participation goal without the item.

As each DBE begins work on a project, the resident engineer observes the supervision of the work, the equipment being used, etc., and talks with the employees about their work. In this way, he can determine whether the DBE is actually performing and supervising the work.

Prior to the payments of the final estimate, the contractor is required to submit a form containing the actual amount paid to DBE contractors and suppliers. If the contractor has failed to reach a dollar amount required to meet the goal his final payment will be reduced by a liquidated damage assessment equal to 25% of the unmet goal.* (Example: With respect to $1,000,000 contract with a 10% DBE goal, and where the actual participation is $60,000 and the unmet goal is $40,000, the liquidated damages would be $10,000).

In addition to activities listed above, in-depth compliance reviews are conducted on from 10 to 15 contractors. Since it is not unusual for a contractor to have two to four contracts underway during a construction season, we are conducting compliance reviews on 30% to 45% of our contractors each construction season.

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* If the contract was awarded based on "good faith efforts" liquidated damages would apply to the amount of participation below the level at which "good faith effort" was accepted.

3. There are two major ways in which Alaska attempts to insure that "front" companies do not participate. One is an assertive certification process. We deny approximately 15% of applications for DBE certifications and 25% of applications for D/WBE status. The validation interview is the most important part of the process.

   The second is the involvement of the Civil Rights Office in the compliance process. That office works closely with the regional staff to alert each other of irregularities. The Civil Rights Office also receives information from the public regarding "fronts", and investigates to determine whether the firms in question are "fronts".

4. DBEs in Alaska face the same kind of barriers faced by other small businesses. These include inadequate financial backing and business management experience, lack of highway construction skills, and lack of bonding.

   Alaska is using a multi-pronged approach to alleviating barriers. First, we have implemented a DBE program for all projects awarded by DOT&PF.

   The Department is responsible for the majority of public construction, including buildings, airports, and harbors. Some of these projects are relatively small

($25,000-$100,000) and require skills similar to those needed in residential and small commercial projects. Since most DBEs have been working in residential construction, the transition to these projects is much easier.

Second, we have raised from $50,000 to $100,000 the project size for which bonding is required. This increases opportunities for DBEs to bid as prime contractors.

Third, we are encouraging prime contractors either to waive bonding for DBEs or to pro-rate their bonding costs.

Fourth, we are using our supportive services funding from FHWA to provide business management assistance and technical assistance.

Fifth, besides publishing our DBE directory twice a year, we have directory information computerized and available through terminals in each of our regional offices.

5. The Civil Rights Office begins tracking projects at the point at which project goals are set. As soon as an anticipated advertisement date is set, information about the project is entered into a computer-based file system. We keep track of both commitment and actual subcontract amount. Until July 1984, we were not receiving information about DBE suppliers, and our reports to FHWA did not include those figures. We are also in the process of tracking the final amount paid to DBEs. Alaska has not experienced serious problems

with contractors not meeting commitments, and the addition of the liquidated damages provision will further discourage such failures. For this reason, we believe that commitment figures are an accurate reflection of how well the program is working at the current time.

6. DBEs in Alaska and the Alaska DOT&PF have a unique barrier with which to deal. It is the sheer size of this State. Alaska covers 570,833 square miles and, according to the 1980 census, has 401,851 people. That is a population density of 0.7. For comparison, the population density of the United States is 64.0, and that of the next least dense state is 4.9 (Wyoming).

Approximately 45% of Alaska's population lives in the greater Anchorage area, with another 35% living in towns and cities in southeastern Alaska or along the major transportation corridors. The remaining 20% of the population lives in rural areas of the State, commonly known as the "bush." The bush includes the sparsely populated areas of northern and western Alaska. A large portion of the bush communities are not connected by road to the population centers.

The interest in and opportunity for bush residents to participate as DBEs is very limited. Most of the individuals living in these areas could not reach the site of a STAA-funded project without the use of an airplane.

In addition, it is very difficult for a firm located in Anchorage to bid on a STAA-funded project located in southeastern Alaska. Besides having to transport equipment over 600 miles of road (some of which goes through the Yukon Territories), the equipment would then have to be loaded onto a ferry or barge at Haines or Skagway for shipment to the community in which the project is located.

Because of our geographic proportions, most of the functions within the Alaska DOT&PF have been regionalized. Regional offices are located in Anchorage, Fairbanks, and Juneau. Anchorage is 571 air miles northwest of Juneau, and Fairbanks is 261 air miles north of Anchorage. The driving distance between Anchorage and Fairbanks is 358 miles.

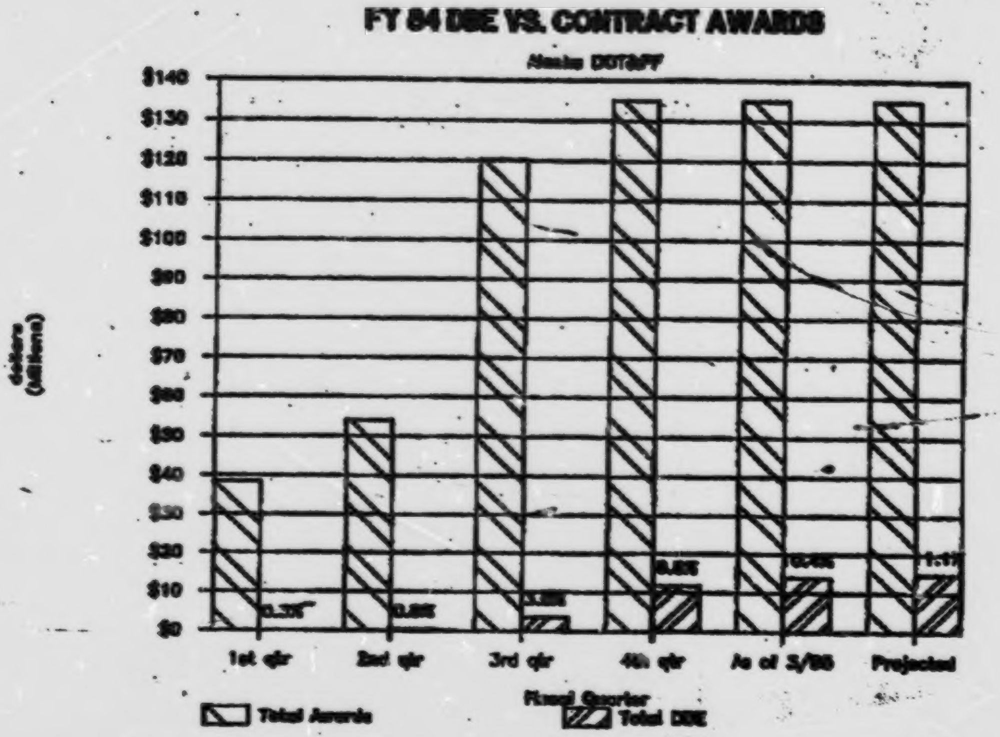
Providing adequate and convenient technical assistance to DBEs is another on-going problem. Until this year, we were only able to fund one assistance center which was located in Anchorage. The DBEs in the remainder of the state were served on an itinerant basis. This spring we opened centers in Juneau and Fairbanks, and were for the first time able to provide adequate levels of service to firms in these communities. This service may be short lived because our supportive services appropriation from FHWA has been cut by 43%. Even with the addition of State funds that have been requested from the legislature, Alaska will be unable to maintain three assistance centers without reinstatement of the FHWA funds.

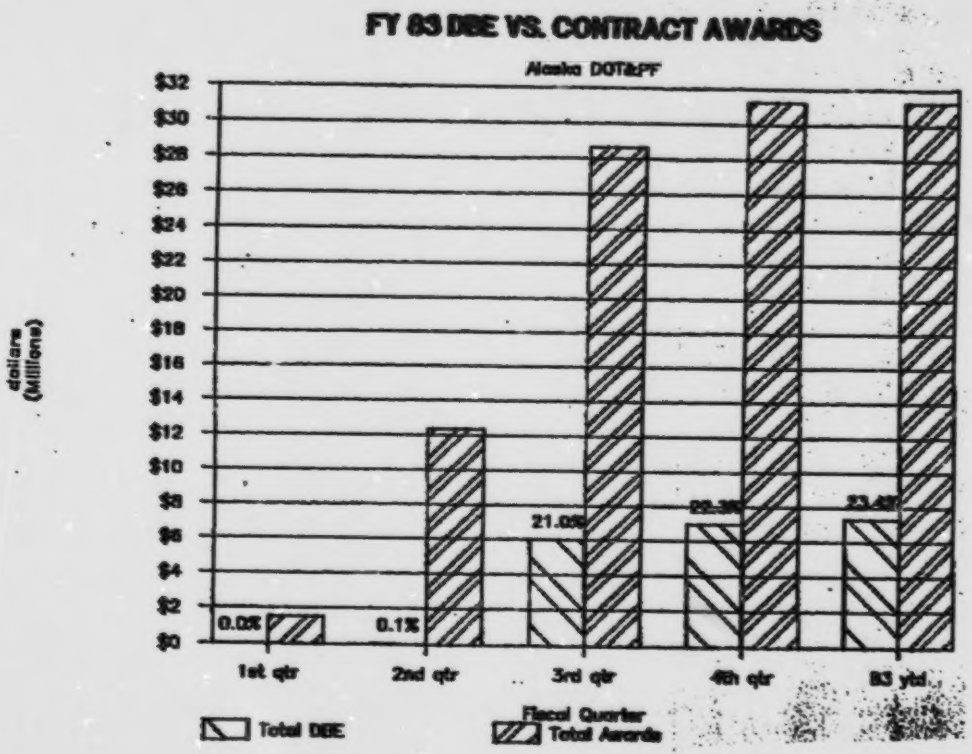
7. In FY83, the State of Alaska's apportionment of FHWA funds was $140,446,858. Included in this amount was approximately $68,000,000 which was not awarded until early FY84. The FY84 apportionment was $152,778,153. In FY83, the State of Alaska received $364,695 from UMTA, and $315,994 from that agency in FY84.

8. The total amounts of STAA funds which were available to the State of Alaska for contracting during the past two fiscal years were as follows: In FY83, $31,283,450 in FHWA funds were awarded as contracts. Of this amount, $5,497,758 were awarded to DBE prime contractors, and $1,838,057 went to DBE subcontractors and suppliers.

In FY84, $135,054,817 in FHWA funds were awarded as contracts. Of this amount, $14,061,658 has gone to DBE subcontractors and suppliers. We are anticipating that an additional $888,269 in DBE subcontracts and supply purchases will occur.

In behalf of Governor Sheffield, I want to thank you for this opportunity to testify on a matter of great importance to his Administration. I would be please to answer any questions which you might have.


FY 84 DBE VS. CONTRACT AWARDS
Alaska DOT&PF
dollars (Millions)
$140
$130
$120
$110
$100
$90
$80
$70
$60
$50
$40
$30
$20
$10
$0
1st qtr
2nd qtr
3rd qtr
4th qtr
As of 3/85
Projected
Fiscal Quarter
Total Awards
Total DBE


FY 83 DBE VS. CONTRACT AWARDS

Alaska DOT&PF

Mr. **Mitchell**. Thank you very much, and I want to compliment you on your written testimony—it was most comprehensive—and also on your oral testimony.

I do have some questions. However, I want to recognize Congressman Hayes from Illinois, who has joined us.

Congressman Hayes, if you want to make a statement at this time, fine.

Mr. **Hayes**. I don't care to make a statement at this time. I have a couple of questions I'll raise with the witness when you have finished, Mr. Chairman. Thank you.

Mr. **Mitchell**. Fine. I do have some questions.

On paper, you look very good. Those goals are awfully high. On paper, it looks good.

Now, you exceeded your disadvantaged business goal of 10 percent by—what did you say?—24?

Ms. **Borden**. Twenty-three percent.

Mr. **Mitchell**. Twenty-three percent.

Let me ask you a couple of questions about that. As I understand it, and as I recall it, Alaska has several very large minority contractors. Is it possible that by using only three of those large contractors, you could exceed your goal by 22 percent?

Ms. **Borden**. That's correct.

Mr. **Mitchell**. OK. What is the picture then in terms of the 23 percent or 22 percent? How many minority firms are involved?

Ms. **Borden**. In fiscal year 1983, all but 4 percent of that 23 percent was in the form of two large prime contracts that went to these minority firms. So most of the participation in fiscal year 1983 was through these large contracts.

Mr. **Mitchell**. That's not very good, is it?

Ms. **Borden**. No, it isn't. That's why we changed the way in which we went after minority participation. That's why we changed our specifications.

Mr. **Mitchell**. OK. Are you convinced now that the change will facilitate a greater participation on the part of more firms?

Ms. **Borden**. All of the 11 percent for 1984 was through small subcontracts. None of those were prime contracts to native corporations.

Mr. **Mitchell**. OK.

Now, in your testimony you indicated that in some instances zero goals are set. How does that happen?

Ms. **Borden**. Zero goals would be set if the project were small and located in a very remote place where there was no availability of minority firms and the cost of mobilization would be extremely high.

We put bonuses on those projects to encourage contractors to seek out perhaps local firms that aren't certified yet. So we try and give them an incentive for going beyond what is required.

Mr. **Mitchell**. In its geography.

Ms. **Borden**. Right.

Mr. **Mitchell**. Did you want Mr. Sykes to join you?

Ms. **Borden**. Sure.

Mr. **Mitchell**. I've heard from time to time some complaints that the DBE subs have some difficulty in getting their money from the prime. Have you encountered complaints of that nature?

Ms. Borden. We have had a few complaints of that nature. Generally, they're the result of problems with paperwork.

In Alaska, DOT is not allowed to release funds until the Department of Labor has been satisfied that employees have been paid, and this is the area where we usually run into the most trouble.

If the DBE sub doesn't make his payroll, then the Department of Labor won't allow us to release the money.

Mr. Mitchell. Repeat what you said for me, please.

Mr. Sykes. Let me try to explain. What happens is, the Department of Labor requires a certified payroll from the sub as well as the joint contractor, and that's after the fact, after the payroll has been met and all the terms have been submitted in terms of validation of expense.

It takes anywhere from 3 to 4 weeks to process it through the system, and by the time we get to the physical people, that takes another 8 to 10 days. So it's about 35 days before the sub is paid, or the general is paid, so he can pay the sub. So that's the time factor.

However, there's some legislation on the agenda now to expedite that I think the Governor made a recommendation on, and the legislature is going to approve it, where they have what is called a quick payment process, and it should reduce that tremendously.

Mr. Mitchell. You know, there are two pieces of law that are on the book that don't necessarily apply to this particular act, but if we have to modify the act, we will. We have a Prompt Payment Act that was passed in 1981, but it's not incorporated into this piece of legislation, the Surface Transportation Act. But I'm not at all sure.

The problem that I'm referring to is not the time delay between the prime getting its money—35 days or so I can understand—but the complaints I've received are that the prime will get his money and then take 60 or 70 days to pay the subs.

Now, have you encountered that at all in Alaska?

Mr. Sykes. No, sir. Being part of the State bureaucracy for a while and now back in the private sector, I think what is misleading is that the processing time that has been taken to process the paperwork for payment has been a real nemesis to the subs.

I think Alaska is trying to correct that, but I also agree with you, the quick payment process should be put in with this funding. I think we should look at that.

Mr. Mitchell. Yes. I think we need that.

Mr. Sykes. I think, that way, it makes all States on an equal basis.

Mr. Mitchell. Ms. Borden, I started out by saying I want contract money counted; that's all; and did I understand you to say in your testimony that you count commitments and actual contracts?

Ms. Borden. We track them separately. The numbers that I gave the committee were actual contract numbers.

Mr. Mitchell. OK. My blood pressure goes up enormously when people play that game with me—"I promised Jim that he's going to get a contract next year," and you count that in for this year. That's duplicitous. I'm glad you're not doing that.

You also mentioned front companies, which I despise. I despise them; they are thoroughly despicable people. I think I said on the floor one day I want to see them both in jail in the same cell. If they love each other that much, put them both in the same cell together.

I expect fronts to take place. People are greedy. People will lie about their heritage, their lineage, and everything else, if they see a chance of getting some money. So front companies will occur.

I have the distinct impression that the problem is not of the magnitude that the detractors of this program would like to suggest. Those who don't want any kind of set-asides for minority business would love to suggest that every company out there is a front company, and that's simply not true based on the data that we have.

When you encounter fronts, how do you handle them? Walk me through the scenario. No. 1, what causes you to believe that a company might be a front company? When you believe that, then what do you do in terms of investigation? And after your investigation, what do you do?

Ms. **Borden**. Well, we try and screen out the fronts before they get certified. The main thing that we do is, we try and do a very thorough job of investigating the firms prior to approving them.

We are continually working on our application forms, and as we find questions that aren't targeting the situation, we revise the form. We're in about the fifth version now, and we think we have one that's going to give us red flags for items that we need to look at.

We have found the profile of a front that the State of Maryland has developed very helpful, and we use that in looking at firms.

We attempt to do personal interviews for all the firms. Again, because of geography, this is very difficult for us to actually do onsite visitations with all the firms. We do that for all the firms that are located in the Anchorage area or in the Juneau area, and we do indepth telephone interviews with owners of applicant firms who are located other places in the State.

Mr. **Mitchell**. There's always a slickster who'll get through no matter what precautions are taken.

Ms. **Borden**. Sure.

Mr. **Mitchell**. How do you handle the slickster that gets through your net?

Ms. **Borden**. Well, hopefully we're going to pick them up because the project engineer on the job is going to report back to us that the person really isn't there or something's wrong with the way the payrolls are being done.

If that happens, we will go out and do an investigation, and look at the items that have been brought to our attention, determine whether or not there is a basis for the doubts about that firm, and if the firm were close to its date for recertification, we would deny recertification. If it was a number of months away from being recertified, we would pull the certification.

Mr. **Mitchell**. At that point, the slick front company would say, "Look; the job is two-thirds complete; we should be allowed to complete it." How do you answer that?

Ms. **Borden**. If we had strong enough evidence, we'd say no.

Mr. **Mitchell**. That's what you should do. You should simply say, "No; you had no business lying to us in the beginning."

How much of a problem are front companies in Alaska? Can you put it on a percentage basis? Do you think that 3 percent of the companies participating in the program might be front companies?

Ms. **Borden**. Real fronts, in the gross sense of a front, is very, very small; it's probably 1 or 2 percent.

Where we have the most trouble are family-owned businesses where the wife is a minority and they figure, "Well, we'll make it a female minority business." Those are the ones where we're having the most trouble right now.

Mr. **Mitchell**. Are those included in the 1 or 2 percent?

Ms. **Borden**. No. We probably have another 5 percent where it's that kind of situation. We were in the past somewhat sloppy about the way in which we certified, and it's much harder to go back and remove people after they've been certified than to say no up front.

We have gone back and denied recertification to about a dozen—we've denied recertification to about 50 firms. Of those, about a dozen have appealed to U.S. Department of Transportation. We've only gotten one response from U.S. Department of Transportation. So we've got about 11 appeals of our denial of recertification pending at U.S. Department of Transportation right now.

Mr. **Mitchell**. How long have they been pending?

Ms. **Borden**. Three to eight months.

It would be real helpful to us if those appeals could be handled in a more timely manner.

Mr. **Mitchell**. I have one last question.

Every State has some problem with administering the program. There is no such thing as a perfect program. If you had to single out your one largest problem area, the one that presents the most difficulty to you in terms of implementation of the program, what would it be?

Ms. **Borden**. Probably getting feedback from the people in the field.

Because we've been able to meet our goals in the past using the large minority prime contractors, it's taking a while for our field staff to get geared up to deal effectively——

Mr. **Mitchell**. With the smaller companies?

Ms. **Borden**. Right.

Mr. **Mitchell**. OK.

Mr. **Sykes**. I'd like to add to that, if you don't mind, in reference to the difficulty in administering the program on the private sector side.

Because of the size of the contracts in DOT in Alaska, it has some great side effects on minority smaller companies, because they're not able to get the up front money to start up and do that kind of work.

Mr. **Mitchell**. Even a recalcitrant agency like the Department of Defense, recalcitrant in terms of its utilization of minority businesses, has been persuaded to break contracts down into smaller components. Are you attempting to do that?

Mr. **Sykes**. We're attempting to do that, but sometimes, as mentioned earlier, the geographic location——

Mr. **Mitchell**. Geographic location I can understand.

Mr. **Sykes**. We're attempting to do that, but, again, because of the equipment required for construction of roads and so forth, sometimes you find some of the smaller companies are just not financially capable, and it reduces the number of participants, rather than just dealing with it through larger firms.

But we've been addressing that, and I know that the Governor has made some real solid input along that line.

Mr. Mitchell. OK. I do have one more question, and then I will stop.

You've read the legislative history of this act and the rules and regulations that have been promulgated. You understand that this is not just for DBE contractors. Do you understand that?

Mr. Sykes. Yes.

Mr. Mitchell. It's for anything—any DBE effort that can be related to the Surface Transportation Act. Is that clear?

Mr. Sykes. Right.

Mr. Mitchell. So that means, on a location far removed from Juneau, you could utilize a DBE food service, and that could be counted.

Are you doing that kind of thing?

Ms. Borden. Yes.

Mr. Mitchell. I say that because I understand the difficulties on some large contracting operations, and that can be mitigated. Those difficulties can be mitigated by using those DBE's that are not necessarily contractors, but their efforts are related to surface transportation work.

Mr. Sykes. Sure.

Mr. Mitchell. Congressman Hayes?

Mr. Hayes. Thank you, Mr. Chairman.

Ms. Borden has given us a rather comprehensive statement, which I will study and analyze.

I have one overall question I want to raise, which will undoubtedly lead to several other questions.

What is the rate of unemployment in the State of Alaska, particularly in what could be categorized as the urban centers—Nome, Anchorage, Fairbanks, and Juneau? What is the rate of unemployment?

Ms. Borden. The overall unemployment rate is about 10 percent. I'm not sure how that's broken down.

Mr. Hayes. My second question is, can you give me the ethnic breakdown of what is categorized as minority in Alaska?

Ms. Borden. Yes, I can.

Approximately 25 percent of the population of Alaska is minority. Of that 25 percent, about 65 percent is Alaska Native, or American Indian; 9.5 percent is Hispanic; 13.5 percent is black; and about 8 percent is Asian.

Mr. Hayes. What steps have been taken by the Alaska Department of Transportation to eliminate or alleviate barriers that restrict disadvantaged business enterprise participation in this program?

Ms. Borden. That's a real tough one. The one thing that we have done is, we have raised from $50,000 to $100,000 the size of the contract on which bonding is required. This allows small and minority contractors to bid as primes on small projects and get their foot in the door.

The other thing that we've done that's related is that we have recently—last summer—implemented the same specifications on State-funded jobs as we have on federally funded jobs.

This is going to help a lot in getting contractors in the door, because the Department of Transportation and Public Facilities in Alaska covers airports, harbors, buildings—all kinds of public construction—and especially in the area of buildings, this is the area where we find most minority contractors get started. They start out in residential housing and work their way up.

So we can get them into the system through the public buildings part, get them used to doing all the paperwork, all those kinds of things, and then assist them through our Supportive Services Program to branch out into areas where they can participate with surface transportation funds.

Mr. HAYES. Where is the PMC that services Alaska located?

Ms. BORDEN. Seattle.

Mr. HAYES. How many staff persons do they have?

Ms. BORDEN. Do I have——

Mr. HAYES. I mean——

Ms. BORDEN. The PMC?

Mr. HAYES. The PMC.

Ms. BORDEN. I think they have three. We don't see them very often.

Mr. HAYES. You'll probably see them less with this proposed budget cut—right?

Mr. SYKES. Right.

Ms. BORDEN. We find it's very difficult for a PMC to be very helpful in Alaska because of the distances and the differences in terms of the climate and terrain that we have to deal with in Alaska.

We have called upon the PMC a couple of times to help us with, like, putting on bonding seminars and that kind of thing, but they have been able to provide very little direct assistance to our clients.

Mr. HAYES. This last question may be somewhat redundant. I don't know if my chairman raised it. If he did, I missed it. Have you encountered any instances where disadvantaged business enterprises have difficulty receiving payment from primes once they have completed their work?

Mr. MITCHELL. I did raise that.

Mr. HAYES. You raised that? All right.

Ms. BORDEN. We've had a few problems. I can think of two instances in the last year where a minority contractor has complained.

Mr. HAYES. If you have already answered, it's a matter of record. No further questions, Mr. Chairman.

Mr. MITCHELL. Thank you very much.

I have some additional questions. I don't want to hold you. I will submit those to you, and if you could get a reply back to me in 10 days, I'd appreciate it.

Ms. BORDEN. I certainly will.

Mr. MITCHELL. In addition, will you convey to your Governor this chairman's and this subcommittee's appreciation for his real commitment to the program?

It doesn't work unless there is a commitment across the board, beginning with the Governor on down, and apparently your Governor does have a commitment to make this program work, and as a result, you look fairly good. I'm not going to be effusive in my praise at this juncture.

But let me be serious. It does take that kind of leadership to make the program work, and he stands in sharp contradistinction to some Governors, who have simply ignored their responsibility in making the program work.

Thank you very much.

Our next witnesses are from the Florida Department of Transportation, Mr. Bruce Gordon, the director of administration, and Mr. Nick Serianni, Federal programs director.

Gentlemen, thank you very much for being here.

Again, I must stress the fact that you submitted your testimony in a timely fashion and we have had an opportunity to read it. Therefore I would strongly recommend that, in your presentation, you simply highlight the most salient points rather than reading your testimony in its entirety since you were cooperative enough to submit it in a timely manner.

Thank you.

TESTIMONY OF BRUCE L. GORDON, DIRECTOR, DIVISION OF ADMINISTRATION, FLORIDA DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY NICK SERIANNI, FEDERAL PROGRAMS DIRECTOR

Mr. **Gordon**. Thank you, Mr. Chairman, members of the committee, staff, and guests.

It's a pleasure for me to be able to represent the State of Florida, specifically the Governor and the secretary of transportation, Mr. Pappas.

While we are very proud of the progress we've made in implementing section 105(f), not only in implementing but achieving the goals. We still have some problems that we feel very confident we are in the process of solving effectively.

Without hesitation, I can say unequivocally that the Florida legislature, the Governor, and the secretary of transportation view this program very seriously and have demonstrated strong commitment to the extent that the section 105(f) provision has been incorporated in State statutes, and thus also have a State DBE 10-percent program.

To give you an example of how that affects our funding, our Federal goal on an annual basis is approximately $35 million using the 10 percent. When you apply that 10 percent to the State program, it comes out to approximately an annual $77 million program.

So we have both a Federal and a State 10-percent DBE program. Our annual budget is approximately $1.3 billion in our State transportation trust fund. The 10-percent State statute deals with all funds in the State transportation trust fund.

When we back out nonparticipating or noncontractable funds, we end up with a contracting program of approximately $770 million which our goal is predicated upon.

Mr. **Mitchell**. That's just for the State?

Mr. Gordon. Just for the State. Well, the State Transportation Trust Fund includes Federal funds.

Mr. Mitchell. It includes Federal funds also?

Mr. Gordon. But in terms of the pure Federal funds, our goal is approximately a $35 million annual program.

Mr. Mitchell. All right.

Mr. Gordon. Additionally, the Florida Legislature has determined that, in order to make this program work effectively, we needed additional tools and mechanisms legislatively in order to make this thing happen.

They therefore provided, last session, a bond guarantee program, and they decided that four-tenths of 1 percent of those funds targeted for the DBE Program be spent on the bond guarantee program. That equates to approximately a $4 million program annually.

In effect, the legislature has authorized us to guarantee bonds—for 90 percent of the bond up to an amount of $250,000. Those contracts over $250,000, the State will guarantee 80 percent of those bonds.

Additionally, the State authorized six-tenths of 1 percent to be applied to a business management training program, because the legislature recognizes one of the problems we had, beyond one of supply of DBE's, is training and experience in road and bridge construction contracting.

Since we are used to receiving approximately $350,000 a year on supportive services Federal funds, having that additional funding—I'm sorry—the six-tenths of 1 percent converts to approximately $5.8 million annually for a classroom and on-the-job training program.

Since we are only used to approximately $350,000 a year, having an infusion of that amount of money created a problem to the extent that the Governor and the Secretary were concerned. We didn't want to just throw a program out on the street and run with it.

So, we have had a consultant developing a "master plan" of how to get that program in place and delivered. The final product of that consultant contract master plan will be delivered on April 21.

We have seen a draft of that plan. We're very pleased with it, and we feel that it's going to be—in fact, we've gotten a lot of surety companies committing to participating in that program. So we're real proud of that effort, and we feel very confident that will assist.

One of the things the legislature and the Governor have requested is that we keep the bureaucracy out of the bond guarantee program and try and achieve results within 60 days from the time the application is filed with the department.

To further improve our Federal and State program, we will soon submit the final master plan to Secretary Pappas for his review. We have targeted for review and acceptance or modification of the master plan within 30 days after receipt and we plan on having contracts in place by June 30, to have that program developed.

We will do that, not from a single contract at the State level, but we will target programs within metropolitan areas, or standard metropolitan statistical areas, where those services will be delivered right at the local level.

We are also in the process of revising our rule which guides our program, to the extent that for newly formed corporations or companies that need to have a track record—for any records to look at from a certification point of view—to provide for a temporary 6-months certification and, during that time, trying to assist them in getting a contract in order to provide them a track record. Then we will go back and look at them to see how that company is operating, where the funding is coming from, equipment arrangements, payrolls, et cetera.

You are correct, Mr. Chairman, we do not have a perfect program; we have some problems; but we are confident that, after the initial shock of this program, to the extent that we held nine public workshops Statewide, which was trying, but it was a most valuable experience, because I think when we first implemented this program, we weren't sure whether we had the right approach.

We are more than confident that we are approaching this program, in a responsible way, and it is achieving significant results. I guess I didn't tell you how that program was implemented.

We now require prime contractors to name DBE subcontractors up front at the time they submit their bids. Previously, they had 10 days after bid submission in order to name their subcontractors or demonstrate good faith efforts.

We have set in place several committees. The first committee is a certification committee, because we felt that having that vested just in the minority programs area, which is an organizational unit of the department, there may be some degree of subjectivity—is the mike not picking up?

I apologize to you, Mr. Chairman.

Mr. Mitchell. There you go.

I just hesitated. Generally, little people like myself are real loud; big men are generally kind of soft spoken. So, I really didn't know.

Proceed.

Mr. Gordon. I lost my place. I lost my trend of thought.

Anyway, we have a certification committee, and it's basically composed of professional people within the department from our Construction Program, our Minority Program, and our Management Program.

We probably—in my judgment, anyway—have one of the most stringent certification processes in the country. We do perform on-site reviews of every company applying for certification in the State of Florida. We extend that to a 300-mile radius outside of the city of Tallahassee, only because of budgetary constraints.

We've had applications from practically all over the country, and we just do not feel that we can afford to handle the financial burden of performing on sites for every application received from all parts of the country.

However, we do deal with the State highway departments or the State departments of transportation in the States where firms have applied for certification, to have them furnish us with information they may already have on file or to gather that information—specific information.

We are very concerned about umbilical cords of a particular firm, and where they lead to, and how they are arranged.

We basically have three criteria; that's ownership, independence, and day-to-day control; and we have mechanisms in place to ensure that the committee knows what to look for and how to weed out.

So we think the strength of our certification process basically reduces the potential for front companies to the extent that they may penetrate the system.

We have project personnel who keep daily diaries of activities of contractors and subcontractors on a daily basis, and if there are any suspicions on the part of project personnel, such as a DBE firm using trucks with some other firm's name on it, or if we notice that the personnel being used by the DBE are also carried on another company's payroll, or if another contractor shows up to perform the work that was committed to, on the front end, by a DBE but another firm showed up, we will not authorize that.

In fact, we have two forms in our contract that are part of the contract. The first one is the certification that's signed by both the prime and sub which, in effect, becomes a part of the contract document because it says how much will be subcontracted to the DBE, what percent that represents of the contract, and what work will be performed by that DBE.

There is only one allowable provision to allow the prime not to use that particular DBE, and that's a lack of performance. In other words, if he's committed on another project, cannot leave that project, that's the only time we will allow the prime to make a substitution.

We had been concerned, prior to the change in definition to DBE, in terms of the results on the tail end of a contract versus the commitments made on the front end. There was a wide variance of what was committed to versus what was achieved.

We have recently performed a limited study, and we are very confident we're within about 1 to 5 percent of achievement. The only reason that it's not 100 percent is because, in the case of DBE's not being able to perform validly, the contractor may not have been able to find a reasonable DBE substitute at the amount of work that was initially committed and, thus, demonstrated, through good faith efforts, that he made the effort to make a 100 percent change.

I have submitted a rather extensive document involving my testimony.

Mr. **Mitchell**. I referred to it as a tome, T-O-M-E, which is excellent, though.

Mr. **Gordon**. What we are trying to do now is, we're trying to make sure that we—in fact, you will notice that it's approximately 180-some pages; 106 of those pages are graphical and statistical analyses.

What we are trying to do is establish an approach to dissect the DBE program in terms of how many DBE's are certified—the breakout of DBE's and whether we are achieving within DBE's reasonable economic parity based on supply.

We found some interesting results. We don't know whether they tell us anything. In other words, while Hispanics represent a lower percent of total DBE's, they're getting a greater percent of the dollars.

Now, we don't know—well, there's one reason that causes that. Hispanics basically are prequalified, and what that means is that they are able to do projects over $150,000. In removing barriers, the legislature does not require prequalification, and they have removed bid bonds from projects of $150,000 or less.

When you look at the capability of our 220 DBE's, there are only about 6 who are capable of doing projects over $150,000. That's a significant problem, and that's one of the target areas in our master training program that we plan on implementing.

Mr. Chairman, I can sit here and bore you all day, because I'm very involved in this program, and you need to tell me to stop.

Mr. MITCHELL. You're not boring me at all. In fact, I am moderately pleased.

Mr. GORDON. And I understand that moderation.

Mr. MITCHELL. But, quite seriously, you have given good, tight testimony, and it's clear that you've put a program together that's being administered in an effective fashion.

Mr. Serianni, do you want to make a comment?

Mr. SERIANNI. No, Mr. Chairman.

Mr. GORDON. There is one more statement.

You indicated earlier that leadership is a key to success. I can tell you, once a month, our executive committee, which is composed of the secretary, the assistant secretary, and key executive staff members, meet and monitor that program on a monthly basis and provide direction or redirection as is appropriate.

We do identify contract amounts awarded on a monthly basis, and we break it out by construction program, consultant program, procurement program, and planning grants—the whole nine yards, we look at it.

Then, within each area, we look at the percentage of DBE participation. Then we break it out by DBE participation in terms of Indians, blacks, Hispanics, et cetera.

[Mr. Gordon's prepared statement, with attachments, follows:]

PREPARED STATEMENT OF BRUCE L. GORDON, DIRECTOR, DIVISION OF ADMINISTRATION, FLORIDA DEPARTMENT OF TRANSPORTATION

Good morning Mr. Chairman, distinguished members of this Subcommittee, staff representatives, and guests. It is a distinct honor for me to have this opportunity to appear before you this morning and to present Florida's experience in implementing and administering our DBE Program, responsive to Section 105(f) of the 1982 Surface Transportation Assistance Act and the Federal Department of Transportation implementing Rules and Regulations, 49 CFR 23, as published in the Thursday, July 21, 1983 issue of the Federal Register. While your letter of February 22, 1985 was addressed to Governor Bob Graham, in which you also requested his appearance, Governor Graham and Transportation Secretary Paul N. Pappas requested that I make this presentation.

In addition to implementing the Federal 10% DBE program, you are advised that the Florida Legislature passed, and Governor Graham signed into law, legislation providing for a 10% State DBE Program involving all state transportation trust funds (339.0805, F.S.) (See EXHIBIT "1"), which includes discretionary set-aside authority, and authorization for a management training program and a bond guarantee program.

In order to orient you to the Florida Department of Transportation, I have included an organization chart following the table on the next page.

Further, the Department has committed to a 2% WBE goal, pursuant to federal regulations. While we have included, as EXHIBIT "11", a rather extensive analyses of federal expenditures with DBEs/WBEs (up to September 30, 1982), and subsequent conversion to DBEs/WBEs since that time, a summary analysis of Federal fiscal year (FFY) expenditures, beginning with FFY-82/83, up to February 20, 1985 (FFY-84/85), is included in TABLE "A.2.b" on the following two pages.

TWO AND A HALF YEAR COMPARISON
FEDERAL CONTRACTS EXECUTED MONTHLY
BY TOTAL; DBE; & WBE AMOUNTS
(October 1, 1982 - February 20, 1985

DBE GOAL = AT LEAST 10%
WBE GOAL = 2%

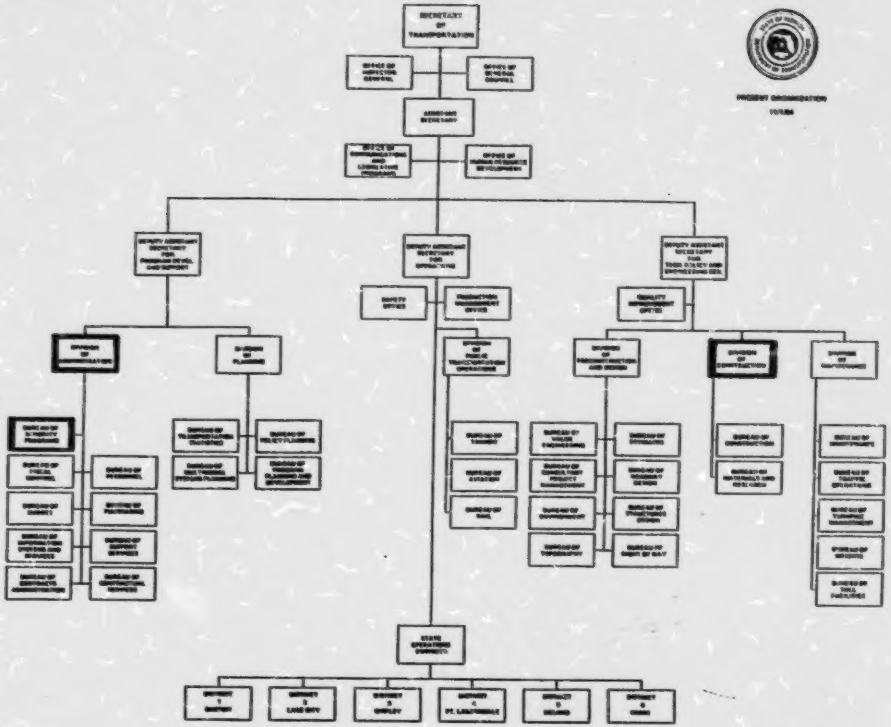
(As of 3/15/85)

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
CONTRACTS EXECUTED												
FFY-82/83	$ 3.4	$ 2.9	$ 12.9	$ 68.7	$ 15.9	$ 25.9	$ 2.9	$ 19.5	$ 57.2	$ 17.1	$ 23.7	$ 18.4
FFY-83/84	$ 3.1	$ 7.4	$ 10.5	$ 15.6	$ 30.1	$ 2.2	$ 9.1	$ 19.5	$ 18.4	$ 18.0	$ 30.5	$105.8
FFY-84/85	$ 11.2	$ 5.8	$ 6.5	$ 38.3	$ 37.4							
CUMULATIVE CONTRACTS EXECUTED												
FFY-82/83	$ 3.4	$ 6.3	$ 19.2	$ 87.9	$103.8	$129.7	$132.6	$152.1	$209.3	$226.4	$250.1	$268.5
FFY-83/84	$ 3.1	$ 10.5	$ 21.0	$ 36.6	$ 66.7	$ 68.9	$ 78.0	$ 97.5	$115.9	$133.9	$164.4	$270.2
FFY-84/85	$ 11.2	$ 17.0	$ 23.5	$ 61.8	$ 99.2							
AMT.TO DBE'S												
FFY-82/83	$ .01	$ .09	$ .5	$ .9	$ .2	$ 1.0	$ .1	$ 2.0	$ 6.0	$ 1.7	$ 2.1	$ 1.2
FFY-83/84	$ .05	$ .55	$ 1.0	$ .8	$ 3.8	$ .2	$ 1.3	$ 2.3	$ 2.9	$ 1.6	$ 5.8	$ 11.8
FFY-84/85	$ 1.3	$ .5	$ .6	$ 4.6	$ 2.6							
CUMULATIVE AMT.TO DBE'S												
FFY-82/83	$ .01	$ .1	$ .6	$ 1.5	$ 1.7	$ 2.7	$ 2.8	$ 4.8	$ 10.8	$ 12.5	$ 14.6	$ 15.8
FFY-83/84	$ .05	$ .6	$ 1.6	$ 2.4	$ 6.2	$ 6.4	$ 7.7	$ 10.0	$ 12.9	$ 14.5	$ 20.3	$ 32.1
FFY-84/85	$ 1.3	$ 1.8	$ 2.4	$ 7.0	$ 9.6							
DBE AS A % OF TOTAL CONTRACTS EXECUTED 1/												
FFY-82/83	.3%	1.6%	3.1%	1.7%	1.7%	2.1%	2.1%	3.2%	5.2%	5.5%	5.8%	5.9%
FFY-83/84	1.6%	5.7%	7.6%	6.6%	9.3%	9.3%	9.9%	10.2%	11.1%	10.8%	12.4%	11.9%
FFY-84/85	11.6%	10.6%	10.2%	11.3%	9.7%							
AMT.TO WBE'S												
FFY-82/83	2/											$ 5.4
FFY-83/84	$ .15	$ 2.75	$ .2	$ .1	$ 12.4	$ -0-	$ .4	$ .3	$ .3	$ -0-	$ .1	$ .7
FFY-84/85	$ -0-	$ .01	$ -0-	$ .09	$ .2							
CUMULATIVE AMT.TO WBE'S												
FFY-82/83												$ 5.4
FFY-83/84	$ .15	$ 2.9	$ 3.1	$ 3.2	$ 15.6	$ 15.6	$ 16.0	$ 16.3	$ 16.6	$ 16.6	$ 16.7	$ 17.4
FFY-84/85	$ -0-	$ .01	$ .01	$ .1	$ .3							
WBE'S AS A % OF TOTAL												
FFY-82/83												2.0%
FFY-83/84	4.8%	27.6 %	14.8 %	8.7%	23.4%	22.6%	20.5%	16.7%	14.3%	12.4%	10.2%	6.4%
FFY-84/85	-0-	.06%	.04%	.2%	.3%							

NOTES: 1/ The low percentage of DBE participation for FFY-82/83 results from two major considertations: (a) While the law was signed 1/6/83, it was retroactive & prorated to 10/1/82, during which time the Dept. "let" the largest contract ever - "SKYWAY BRIDGE"; and (b) federal recognition that the first year represented a transition period from "MBE" to "DBE".

NOTES: (Continued)

3/ Because of the definitional distinction and separation of "WBE's (since, as a group, they do not qualify under "socially and economically disadvantaged" criteria), and since there was no legislative goal mandated, we did not keep WBE reporting on a monthly basis, although we did accumulate a consolidated annual WBE level of achievement in contract participation.


SECRETARY OF TRANSPORTATION
OFFICE OF INSPECTOR GENERAL
OFFICE OF GENERAL COUNSEL
ASSISTANT SECRETARY
OFFICE OF COMMUNICATIONS AND LEGISLATIVE PROGRAMS
OFFICE OF HUMAN RESOURCE DEVELOPMENT
DEPUTY ASSISTANT SECRETARY FOR OPERATIONS
SAFETY OFFICE
DIVISION OF PLANNING
DIVISION OF PUBLIC TRANSPORTATION OPERATIONS
DIVISION OF CONSTRUCTION
STATE OPERATIONS DISTRICTS
DISTRICT 1 BARTOW
DISTRICT 2 LAKE CITY
DISTRICT 3 CHIPLEY
DISTRICT 4 FT. LAUDERDALE
DISTRICT 5 DELAND
DISTRICT 6 MIAMI

PRESENT ORGANIZATION

[illegible]

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Responsive to your request, the following information is presented in the same order as contained in your letter of February 22, 1985:

1. Florida's certification process:

   A. GUIDELINES

   Florida's certification process is guided by provisions contained in our implementing rule, Rule Chapter 14-78 (See Section 14-78.05 starting at page 74, of EXHIBIT "2").

   B. APPLICATION FORM

   DBEs/WBEs desiring to become certified with the Florida Department of Transportation must first complete our application form ("Schedule A", attached as EXHIBIT "3"). DBE/WBE firms apply either as sole proprietorships, partnerships, or corporations, and are evaluated accordingly.

   C. ON-SITE REVIEWS

   Prior to granting or denying certification to a DBE/WBE firm, an "ON-SITE" review is conducted for all in-state DBE/WBE firms, and those out-of-state firms within a 300-mile radius of Tallahassee (See EXHIBIT "4") . Reviews are conducted at the DBE/WBE applicant's operating headquarters, where staff, business records, equipment, supplies, and other resources are located. Reviewers use a "CERTIFICATION REVIEW" Checklist (See EXHIBIT "5") which includes provision for comments concerning specific inquiries and observations.

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D. **NETWORK COORDINATION**

To adequately evaluate those DBE/WBE firms outside of the State of Florida, the Department corresponds with the State Department of Transportation (or State Highway Department) where the DBE/WBE firm is located, and requests whatever information may be available and appropriate. Further specific documentation may also be requested from the DBE/WBE firm, to supplement information furnished in the application filed and information furnished by the State DOT or Highway Department where located. This information is intended to provide the Florida Department of Transportation sufficient documentation to substantiate and demonstrate ownership, independence, and day-to-day control.

E. **DBE/WBE CERTIFICATION COMMITTEE**

The Department's DBE/WBE Certification Committee consists of three members, with professional representation from the Department's Bureau of Minority Programs, Bureau of Construction, and the Office of Management Review and Evaluation.

Committee members are appointed by me and serve at my direction. The Committee functions to review and evaluate the qualifications, ownership, business independence, policy, operational control, and adequacy of resources of each DBE/WBE applicant, according to the file developed by the DBE/WBE Reviewer. Based on the merits of each application and file developed, the Committee makes one of the following determinations:

(1) Approve for Certification (a three-month temporary certification until the application is fully evaluated and approved/disapproved within the 90 days--for firms which are 100% owned and controlled by DBEs/WBEs; and/or a one-year certification for DBE/WBE firms, validated within the 90 days as being independent, bona fide DBE/WBE owners);

(2) Deny Certification (for lack of ownership, control, or independence);

(3) Refer back to the DBE/WBE Reviewer to gather additional specific information needed to make a determination.

F. ADMINISTRATIVE PROCEDURES ACT

DBE/WBE firms whose Certification requests are either denied or rejected, may request the decision be reviewed under the provisions of Section 120.57 of the Florida Administrative Procedures Act. When a request for hearing is filed with the Department's Clerk of Agency Proceedings, the matter is referred to the Division of Administrative Hearings (a separate state agency), for assignment to an Administrative Hearing Officer, to review and "hear" the proceeding. Upon conclusion of this process, a "Recommended Order" is forwarded to the Florida Secretary of Transportation by the Hearing Officer, which the Secretary may accept, modify, or reject. However, Chapter 120 imposes certain restraints on the Secretary's authority to modify or reject a recommended order. The Secretary's final order is directly appealable to a Florida Appellate court.

G. **FEDERAL APPEAL RIGHTS**

In addition to the other remedies provided, any person adversely affected by any action taken by the Department may exercise the appeal rights granted in 49 CFR Part 23.

2. **Florida's Procedures Used To Insure Compliance With Section 105(f) Regarding DBE Participation:**

A. RULE - **Provisions To Insure Compliance** (Refer to **EXHIBIT "2"**):

(1) Failure to Meet Goals or Good Faith Efforts Requirements

Failure of a contractor (prime contractor) to meet DBE/WBE goals and/or submit documentation of "Demonstrated Good Faith Efforts", **AT THE TIME BIDS ARE SUBMITTED**, will result in bids being rejected as "NON-RESPONSIVE" [Section 14-78.03(2)(b)4., Page 71].

(2) Submission and Approval of DBE/WBE Program (Plan):

No contract shall be awarded to a contractor until after its affirmative action "DBE/WBE PROGRAM" (Plan) has been approved by the Department. The DBE/WBE Program may be submitted prior to or with its first bid submission, and shall be updated annually thereafter [14-78.03(4)(b) and 1., Page 73]. (For a **"Sample Plan"**, see **EXHIBIT "6"**).

(3) Failure To Meet Commitment To Carry Out DBE/WBE Programs:

Failure of a contractor to keep its commitment to carry out its approved affirmative action "DBE/WBE Program" (which becomes a part of any contract awarded to the contractor), shall be deemed to be in noncompliance with our Rule and the DBE/WBE Special Provisions (See Subparagraph B. below), and will thus be considered a breach of contract [14-78.03(4)(b)2., Page 73].

(4) Suspension Or Revocation:

The Department may suspend, for a specified period of time, or revoke the Department's **CERTIFICATION** of DBE/WBE status, if a DBE/WBE fails to meet any one or a combination of the six (6) specific conditions contained in our Rule [14-78.08(1)(a) through (f), Page 77].

B. DBE/WBE SPECIAL PROVISIONS - **Provisions To Insure Compliance**

A copy of this eight-page document (Attached as EXHIBIT "7") is included in all bidding and contract documents, and communicates the filing requirements and enforcement provisions identified in Rule Chapter 14-78 above, including affirmative action requirements for (1) contracts where no goals are specified, and (2) subletting of contracts. Additionally, provision is made for DETERMINATIONS OF DEFAULT, if the contractor fails to ensure that DBE/WBE firms have the maximum opportunity to participate in the performance of contracts.

C. GOAL SETTING COMMITTEE:

(1) PURPOSE: The purpose of the Goal Setting Committee is to ensure that certified MBEs/WBEs will have an equitable opportunity to

compete for contracts or subcontracts "let" by the Department, or awarded by a prime contractor, respectively.

(2) SCOPE:

The Goal Setting Committee reviews and evaluates transportation projects to identify those contract activities and opportunities which have the greatest potential for DBE/WBE participation. Once these have been identified, goals are set, which are reasonable and related to the availability of DBEs/WBEs in the areas of their expertise. The setting of goals is an educated and experienced attempt to match projected contract and subcontract opportunities (Demand) with available and Department certified DBEs/WBEs (Supply).

(3) COMMITTEE MAKEUP:

The Committee is made up of professional representatives of: (a) the Tallahassee Division Office of the Federal Highway Administration; (b) the Florida Transportation Builders Association; (c) the Department's Bureau of Construction, and (d) the Department's Bureau of Minority Programs.

(4) MAJORITY DECISION-MAKING:

Decisions are made by a consensus among Committee members.

(5) COMMITTEE SCHEDULE:

The Committee meets once a month, usually two (2) days after receiving the Preliminary Cost Estimates from the Contracts

Estimating System and approximately three weeks prior to the mailing of bid documents.

(6) PROCEDURES AND CRITERIA:

The first step in recommending a project goal to this Committee is performed by the Representative from the Bureau of Minority Programs. Upon receiving the Preliminary Cost Estimates from the Construction Office, the Representative then reviews the DBE Directory to determine the potential supply of DBEs/WBEs, by areas of expertise, and reviews the bid items of each project to determine where opportunities exist. An initial match is made of the DBEs/WBEs with the type of work and bid items going to contract. The next step is a review of the estimated dollar value of work for each bid item for determination of the total dollar value of work to be performed. Recommended goals are then documented, based on the above criteria.

After the Bureau of Minority Programs Representative has completed the above steps on all projects to be let by the Department for the following month, a meeting is scheduled with all Committee members. The Committee meets as a body and reviews each project and the recommended goals and either accepts or modifies the recommended goals.

D. **The Good Faith Efforts Committee:**

The purpose of this Committee is to review and evaluate the "Good Faith Efforts" information required to be provided in those contracts where goals established by the Department were not met (at the time of bid letting), according to the standards contained in Rule Chapter 14-78 and the DBE/WBE Contract Special Provisions. This Committee convenes five days following each monthly bid letting. This is a three person Committee with professional representation from:

a. The Bureau of Construction;

b. The Division of Administration; and

c. The Bureau of Minority Programs.

E. **Executive Oversight**

To ensure the Department meets or exceeds its Federal and State 10% DBE and 2% WBE mandates, a status report is included in our **PRODUCTION MANAGEMENT REPORT**, which is reviewed by the Department's Executive Committee and District Engineers during our monthly Production Management/District Engineers Meeting. As necessary or appropriate, direction or redirection is provided to staff in order to make mid-course corrections, should we fail to be on target.

F. **Contractor Commitment Carryout** - **(Certification of Subcontract Amount/Affidavit of Payment)**

Prior to the implementation of Section 105(f) of the Surface Transportation Assistance Act of 1982, Departmental procedures required the prime contractor to submit a certification which stated, in part, that all subcontractors were paid for work performed on a particular project. There were, however, no certifications by the contractor, subcontractor, or DBEs/WBEs which indicated the dollar amounts actually received for such work. Therefore, we had to rely on the dollar amount representation included on the "front-end" Authorization To Sublet forms, and the submission, by the contractor, of FHWA Form 1405.

To insure compliance with Section 105(f) STAA, and to make certain that the Department has proper documentation of DBE subcontract amounts, the following procedures and forms have been developed and implemented:

(1) Certification of Subcontract Amount to DBE/WBE Contractor

The contractor shall submit this certification form (see EXHIBIT "8") along with the Request for Authorization to Sublet Work, indicating the name of the DBE/WBE and the exact amount of the work to be completed by the DBE/WBE.

This certification of subcontract to DBEs/WBEs is not valid unless signed by both the Prime Contractor and the respective DBE/WBE. In addition, this form identifies that a contract has been executed in the amount so indicated.

(2) DBE/WBE Contractor's Affidavit of Payment

This affidavit of payment form (see EXHIBIT "9") is required of the DBEs/WBEs who have completed subcontract work on a DOT project. This affidavit will indicate the exact dollar amount received for the work and the type of work performed, and is due to be filed with the Department immediately following receipt of final payment to the DBE/WBE from the Prime Contractor.

The DBE/WBE owner must sign the affidavit. Final payment to the Prime Contractor is contingent upon receipt by FDOT of all such affidavits.

G. **Contract Monitoring - Project Personnel**

Among other responsibilities, each Project Engineer compiles, in his daily report, all DBE activities. Included in the report is information concerning the number of DBE personnel on the job and the amount of work accomplished. These daily reports are compiled into a monthly estimate, by which the prime contractor is paid.

H. **Contract Awards Technical Review Committee**

The Contract Awards Technical Review Committee consists of five (5) professional/managerial members representing the Bureaus of Construction, Estimates, and Contracts Administration; the Divisions of Construction and Administration; and the Office of Production Management; with staff support from the Office of the General Counsel. This Committee reviews all projects that have problems with "apparent low bidders", as to completeness, compliance with and responsiveness to all State and Federal rules and regulations, including EEO/AAP, and other bid document conditions, specifications, and provisions.

I. **Awards Committee**

The Awards Committee consists of the Assistant Secretary, and the Deputy Assistant Secretaries of (1) Operations, (2) Program Development and Support, and (3) Technical Policy and Engineering Services. This Committee makes final decisions on contract awards, based on recommendations from the Contract Awards Technical Review Committee. Split votes and other factors of consideration are referred to the Secretary for final decision.

Because I have introduced a number of committees, processes, and components involving our DBE/WBE Program, I would now like to place them somewhat in perspective of their interrelationships. Therefore, please see EXHIBIT "10".

3. Florida's Enforcement Mechanisms Used To Insure that "Front Companies" Do Not Participate In the Program.

The strength of Florida's rather comprehensive and stringent certification process significantly reduces the potential for "fronts" becoming certified with the Florida Department of Transportation. In reviewing certification applications, and in the conduct of on-site reviews, Reviewers are reasonably trained and experienced in tracing financial, managerial, controlling, and other business relationships ("umbilical cords") to determine real ownership, independence, and day to day control of the firm.

Additionally, Section 14-78.06(1)(b) of our Rule Chapter (dealing with "Suspension or Revocation" of DBE/WBE certification status) specifically states: "(1) The Department may suspend, for a specified period of time, or revoke the Department's certification of DBE or WBE status if it finds: .... (b) The DBE or WBE willfully made a false, deceptive, or fraudulent statement in its application for certification or in any other information submitted to the Department."

If, for some reason, a "front company" became certified with this Department, obtained a contract or subcontract, and assumed a "pro forma" role in the conduct of work required to be performed, Department Project-Personnel who detect or observe highly questionable activities being performed by the DBE/WBE in the daily monitoring of project progress (actions such as: vehicles or equipment being used by the DBE but containing another firm's name; personnel performing work for the DBE, but being carried on another firm's payroll; another firm showing up to perform the work supposedly contracted to be performed by a specifically-named DBE; etc.), may call for a compliance review by our Bureau of Minority Programs, or an investigation by our Inspector General's Office.

The Department also conducts Contractor Compliance Reviews, in which Civil Rights Specialists review records of the contractor and subcontractors to determine compliance with EEO/AAP contractual obligations, and effective carryout of DBE/WBE goal commitments.

Because previously conducted reviews (performed when we operated under the MBE definition) identified a high degree of variance, in terms of front-end commitments versus project completion results, relative to the percent and dollar amounts awarded to MBEs, the Department, in implementing the DBE/WBE program, revised some of our contract reporting forms to include provision for the prime contractor to identify the specific DBEs/WBEs to be used in subcontracting, by name, dollar amount to be awarded, and percent representation of total contract funds, in which each form is to be signed by both the prime and the DBE/WBE subcontractor. We then designed an affidavit, to be completed by DBEs/WBEs, attesting to the total amount of funds received at the completion of the work they performed on the project. The prime's final payment is withheld until the Department is in receipt of this affidavit from affected DBE/WBE subcontractors.

4. Removing Barriers

The following legislative and administrative actions have been taken to alleviate barriers that negatively affect DBE participation by small business generally and DBEs specifically:

A. Prequalification is no longer required on contracts estimated to cost $150K or less.

B. Bid bonds are no longer required on projects of $150,000 or less. DBEs are not required by the Department to be bonded as subcontractors. Prime Contractors may or may not elect to cover DBEs under their overall project bonding coverage.

C. The Florida Legislature enacted legislation to provide for training, technical assistance, and bond guarantees for DBEs (see EXHIBIT "1").

D. The Department has selected a consultant to develop a MBE/DBE/WBE/SBE "Master Plan," which will provide for a comprehensive approach to effectively implement the authorized Management/Business Development Training Program and bond guarantee program, in concert with our annual allocation of federal supportive services funds.

E. The Florida Legislature also enacted legislation authorizing the Department to administer DBE set-asides, as an additional tool and mechanism to assist in achieving our DBE goals.

F. Technical assistance is provided by DOT District Construction Engineers and other District Staff, upon request by DBEs, regarding specific projects.

G. The Department strongly encourages joint venturing between DBEs and WBEs and between DBEs/WBEs and majority contractors.

5. Florida's information management system for collecting and compiling data on DBE participation under the Act.

This Management Information System (MIS) was developed under a consultant contract and has been operational for approximately two months. This system is maintained and administered by our Bureau of Minority Programs and provides the information necessary to manage the Department's EEO/AAP programs. The MIS produces reports required by the FHWA and the Florida Department of Transportation. More specifically, one of the subsystems (Disadvantaged Business Enterprises) also tracks DBE activities, from the time they are certified to the receipt and completion of contracts or subcontracts.

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The following information is captured and maintained on each of the subsystem components of the "Minority Program Reporting (MPR) System":

(1) The "DBE/WBE Directory" displays specific information about all disadvantaged business enterprises, which are certified with the Florida Department of Transportation;

(2) The "Vendor Contract Information" file details contract/subcontract information for each vendor registered with the State Department of General Services or the Department of Transportation;.

(3) The "MPR Project Status" file displays information about a project which has a DBE or OJT requirement; and

(4) The "FHWA Contracts and Subcontracts" file details information for each contract or subcontract awarded to a DBE/WBE on a monthly basis.

6. **Problem Areas**

A. There is a limited supply and capability of Department certified DBEs to effectively and dynamically compete for a majority of the types of specialty items contracted by the Department. The majority of certified DBEs are concentrated in the specialty areas of **grassing**, **sodding**, **fencing**, and **concrete** (slope paving, box culverts, etc.).

B. A major portion of Department certified DBEs lack adequate road and bridge construction and maintenance contracting experience or training.

C. DBEs often fail to respond to prime contractors' requests for bid quotes (for any number of alleged reasons).

D. There has been a lack of expected responsiveness of certified DBEs to projects advertised to date for set-asides.

E. DBEs experience significant problems obtaining startup capital (loans). There are several bills presently pending (drafted, submitted, or sponsored by other entities or legislators) to provide such relief. The FDOT requested a loan guarantee program during the 1984 Legislative Session, but was unsuccessful in generating sufficient support, although we were successful in getting support for a training and bond guarantee program.

7. and 8. **The Total Dollar Amount of the Funds Appropriated by DOT to Florida under the STAA of 1982 for Fiscal Years 1983 and 1984**; and **The Amount of that Total that Florida Has Used to Provide Contracting Opportunities for DBEs for Fiscal Years 1983 and 1984**.

The FHWA requires the Department to report federal expenditures according to **"CONTRACTS EXECUTED"**, to include total expenditures and the amount and percent awarded to DBEs/WBEs. The reporting "cutoff date" is the 20th of each month reported. Our recordkeeping system has been designed to capture and report federal funds according to monthly expenditures, rather than "funds appropriated". Therefore, our report is presented according to our federal reporting requirements.

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While a summary table was presented during the beginning of my testimony, more detailed analyses and graphical presentations, on an annual basis, are attached as **EXHIBIT "11"**, which includes analyses of our "State DBE/WBE Program.

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Mr. Chairman, this concludes my presentation of testimony, as requested, and I am prepared to respond to any questions or concerns you or any member of the Subcommittee may wish to ask of me. If I am unable to provide you with a response this morning, I will see to it that the information will be furnished to you at a later date.

I appreciate this opportunity to appear before you and to present, on behalf of Governor Graham and Florida Transportation Secretary Pappas, Florida's experience in effectively implementing the provisions of Section 105(f) of the 1982 Surface Transportation Assistance Act.

partment can clearly demonstrate that for reasons of expediency or efficiency it is in the best interests of the department to contract with the Department of Corrections.

(b) Funds appropriated from the State Transportation Trust Fund for economic development projects before July 1, 1985, may be used by the Department of Commerce for any project authorized by s. 288.063, the provisions of subsection (2) to the contrary notwithstanding.

History.—s. 139, ch. 29965, 1955; s. 1, ch. 31416, 1956; s. 19, ch. 57-318; s. 1, ch. 65-219; ss. 23, 35, ch. 69-106; s. 13, ch. 77-165; s. 4, ch. 77-416; s. 1, ch. 78-286; s. 118, ch. 79-190; s. 2, ch. 81-312; s. 1, ch. 82-120; s. 38, ch. 83-3; s. 1, ch. 83-346; ss. 207, 213, ch. 84-309.

339.0805 State Transportation Trust Fund; specified percentage to be expended with small businesses owned by socially and economically disadvantaged persons; construction management development program; bond guarantee program.—

(1) Except to the extent that the head of the department determines otherwise, not less than 10 percent of the amounts expended from the State Transportation Trust Fund shall be expended with small business concerns owned and controlled by socially and economically disadvantaged individuals as defined by s. 8(d) of the Small Business Act (15 U.S.C. s. 637(d)) and relevant subcontracting regulations promulgated pursuant thereto. In fulfilling this mandate, the department shall utilize every means available to it, including, but not limited to, goals and setasides for competitive bidding and contracting only by, between, and among those firms which are certified by the department as socially and economically disadvantaged business enterprises and which are prequalified as may be appropriate. It is the policy of the state to meaningfully assist socially and economically disadvantaged business enterprises through a program that will provide for the development of skills through business management training, as well as financial assistance in the form of bond guarantees, to primarily remedy the effects of past economic disparity. Such competitive sealed proposals may be the result of joint ventures between small business concerns which are owned and controlled by socially and economically disadvantaged individuals and other subcontractors.

(2) The head of the department is authorized to expend up to 6 percent of the funds specified in subsection (1) which are designated to be expended on small business firms owned and controlled by socially and economically disadvantaged individuals to conduct, by contract or otherwise, a construction management development program. Participation in the program will be limited to those firms which are certified under the provisions of subsection (1) by the department or the federal Small Business Administration or to any firm which has annual gross receipts not exceeding 2 million dollars averaged over a 3-year period. The program will consist of classroom instruction and on-the-job instruction. The registration fee shall be set to cover the cost of instruction and overhead. No salary will be paid to any participant.

(a) Classroom instruction will consist of, but is not limited to, project planning methods for identifying manpower, equipment, and financial resource needs; bookkeeping; state bidding and bonding requirements; state and federal tax requirements; and strategies for obtaining loans, bonding, and joint venture agreements.

(b) On-the-job instruction will consist of, but is not limited to, setting up the job site; cash flow methods; project scheduling; quantity takeoffs; estimating; reading plans and specifications; department procedures on billing and payments; quality assessment and control methods; and bid preparation methods.

(c) Contractors who have demonstrated satisfactory project performance, as defined by the department, can be exempted from the provisions of paragraphs (a) and (b), but shall pay the registration fee and be validated as meeting the minimum curriculum standards of proficiency, in the same manner as participants who successfully complete the construction management development program only if they intend to apply for funds provided for in subsection (3).

(d) The department shall develop, under contract with the State University System, the community college system, a school district in behalf of its vocational technical center, or a private consulting firm, a curriculum for instruction in the courses that will lead to a certification of proficiency in the construction management development program.

(3) The head of the department is authorized to expend up to 4 percent of the funds specified in subsection (1) on a bond guarantee program for participants who are certified under subsection (1) and who meet the minimum curriculum standards of proficiency. The state will guarantee up to 90 percent of a bond amount of $250,000, or less, and 80 percent of a bond amount greater than $250,000, which bond is provided by an approved surety. However, in addition to the requirements of paragraph (2)(c), a person participating in the bond guarantee program must place 5 percent of the contract amount in reserve with the department until final acceptance of the project, in order to receive a bond guarantee. The department shall not commit funds for this program which are in excess of those funds appropriated specifically for this purpose.

(4) Within 1 year after implementation of this section, and every year thereafter, the head of the department is required to report the progress of this program to the President of the Senate, the Speaker of the House of Representatives, and the Governor. The report shall include, as a minimum, the number of users of the bond guarantee plan, along with the number of defaults and dollar loss to the state; the number of students participating in the construction management development program by urban location; the number certified and not certified; the cost of the program categorized by cost of administration, cost of instruction (on-the-job and classroom), and cost of supplies; and a comparison figure of those firms certified by the department under subsection (1) over the year, and the same figure for socially and economically disadvantaged contractors prequalified to perform prime contracting work for the department.

(5) The department shall promulgate rules for implementing the directives contained in this section.

History.—s. 206, ch. 84-309; s. 1, ch. 84-370.

Editorial Note: Reprinted to reflect a change in the Specific Authority.

CHAPTER 14-78
PARTICIPATION BY WOMEN AND SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS IN DEPARTMENT OF TRANSPORTATION CONTRACTS

14-78.01 General. This rule chapter implements the Department of Transportation's policy that women and socially and economically disadvantaged individuals shall have the maximum opportunity to participate in the performance of contracts let by the Department for the construction, reconstruction or maintenance of transportation facilities.

Specific Authority 20.05(5), 334.02(6), 339.05, 339.081(4) FS. Law Implemented 334.021, 339.05, 339.081(4) FS. History—New 12-9-81, Amended 5-23-84.

Editorial Note: The 5-23-84 amendment entirely superseded the former rule.

14-78.011 Time and General Procedural Requirements.

(1) Time. In computing any period of time prescribed by this rule chapter, the day of the act from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. As used in this rule chapter, a legal holiday means those days designated in Section 110.117, F.S., and any other day the Department's offices are closed.

(2) Requests for Hearing. All requests for hearing shall be in writing and shall be filed with the Clerk of Agency Proceedings, Department of Transportation, MS 58, Room 562, Haydon Burns Building, Tallahassee, Florida 32301. A request for hearing is filed when it is delivered to and received by the Clerk of Agency Proceedings. Accordingly, a request for hearing is not timely filed unless it is received by the Clerk of Agency Proceedings within the appropriate time period.

Specific Authority 20.05(5), 334.02(6), 339.081(4) FS. Law Implemented 334.021, 339.05, 339.081(4) FS. History—New 5-23-84.

14-78.02 Definitions. Throughout this rule chapter, the following words and phrases shall have the respective meanings set forth below unless a different meaning is plainly required by the context:

(1) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States or lawfully admitted permanent residents and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, and any other minorities or individuals certified as disadvantaged by the Small Business Administration pursuant to Section 8(a) of the Small Business Act (15 U. S. C. 637) and implementing regulations. Individuals in the following groups are presumed to be socially and economically disadvantaged, provided, however, this presumption is rebuttable:

(a) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;

(b) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

(c) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U. S. Trust Territories of the Pacific and the Northern Marianas;

(d) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.

(e) "Asian-Indian Americans," which includes persons whose origins are from India, Pakistan, and Bangladesh.

(2) "Disadvantaged business enterprise" or "DBE" means a small business concern, as defined by Section 3 of the Small Business Act (15 U. S. C. 632) and implementing regulations:

(a) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(3) "Woman business enterprise" or "WBE" means a small business concern, as defined by Section 3 of the Small Business Act (15 U. S. C. 632) and implementing regulations:

(a) Which is at least 51 percent owned by one or more women; or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(b) Whose management and daily business operations are controlled by one or more of the women who own it.

(4) "Joint venture" means an association of two or more firms to carry out a single business enterprise for which purpose the firms combined their property, money, effects, skills or knowledge.

(5) "Certified" means a finding of qualification by the Department in accordance with this rule chapter.

Specific Authority 20.05(5), 334.02(6), 339.081(4) FS. Law Implemented 334.021, 339.05, 339.081(4) FS. History—New 5-23-84.

14-78.03 General Responsibilities.

(1) In furtherance of the purpose of this rule chapter, the Department shall establish overall DBE and WBE goals for its entire DBE and WBE program. In setting the overall goals the Department shall consider the following factors:

(a) the number and types of contracts to be awarded by the Department;

(b) the number, capacity, and capabilities of certified DBEs and WBEs likely to be available to compete for contracts let by the Department; and

(c) the past experience of the Department in meeting its goals and the results and reasons therefore.

(2) To implement its DBE and WBE goal program the Department may:

(a) set aside contracts for competition only by, between, or among certified DBEs.

1. The total dollar amount of all projects set aside in any one fiscal year shall not exceed ten percent of the funds allocated for contracting for that fiscal year.

2. A contract shall not be set aside unless at least three potential eligible bidders can be identified.

3. In selecting contracts suitable for a set aside, the Department shall consider the following factors:

a. the number, capacity, and capabilities of potential eligible bidders;

b. the type of work required by the contract to be let; and

c. the estimated total dollar amount of the contract to be let.

4. A joint venture between a DBE and a non-DBE is eligible to compete in a set aside if the DBE partner of the joint venture is certified pursuant to this rule chapter, if the certified DBE partner's share in the ownership, control, and management responsibilities, risks, and profits of the joint venture is at least 51 percent and if the DBE partner is responsible for a clearly defined portion of the work to be performed.

(b) establish contract goals on each contract with subcontracting opportunities for certified DBEs and WBEs.

1. The Department shall establish separate contract goals for firms owned and controlled by socially and economically disadvantaged individuals and for firms owned and controlled by women.

2. In setting contract goals, the Department shall consider the following factors:

a. the type of work required by the contract to be let;

b. the subcontracting opportunities in the contract to be let;

c. the estimated total dollar amount of the contract to be let; and

d. the number, capacity and capabilities of certified DBEs and WBEs.

3. For contracts with an estimated total dollar amount of $1,000,000 or less, the contract goals shall not exceed 50 percent of the identified potential for DBE and WBE participation. For contracts with an estimated total dollar amount of $1,000,000, the contract goals shall not exceed 75 percent of the identified potential for DBE and WBE participation.

4. For all contracts for which DBE and WBE contract goals have been established, each bidder shall meet or exceed or demonstrate that it could not meet, despite its good faith efforts, the contract goals set by the Department. The DBE and WBE participation information shall be submitted with the contractor's bid proposal. Award of the contract shall be conditioned upon submission of the DBE and WBE participation information with the bid proposal and upon satisfaction of the contract goals or, if the goals are not met, upon demonstrating that good faith efforts were made to meet the goals. Failure to satisfy these requirements shall result in a contractor's bid being deemed nonresponsive and the bid being rejected.

a. The contractor's bid submission shall include the following information:

i. The names and addresses of certified DBE and WBE firms that will participate in the contract;

ii. A description of the work each named DBE and WBE firm will perform;

iii. The dollar amount of participation by each named DBE and WBE firm.

iv. If the DBE or WBE goal is not met, sufficient information to demonstrate that the contractor made good faith efforts to meet the goals.

b. In evaluating a contractor's good faith efforts, the Department will consider:

i. Whether the contractor, at least seven days prior to the letting, provided written notice by certified mail, return receipt requested, or hand delivery, with receipt, to all certified DBEs and WBEs which perform the type of work which the contractor intends to subcontract, advising the DBEs and WBEs 1) of the specific work the contractor intends to subcontract; 2) that their interest in the contract is being solicited; and 3) how to obtain information about and review and inspect the contract plans and specifications.

ii. Whether the contractor selected economically feasible portions of the work to be performed by DBEs or WBEs, including where appropriate, breaking down contracts or combining elements of work into economically feasible units. The ability of a contractor to perform the work with its own work force will not in itself excuse a contractor's failure to meet contract goals.

iii. Whether the contractor provided interested DBEs or WBEs assistance in reviewing the contract plans and specifications.

iv. Whether the DBE or WBE goal was met by other bidders.

v. Whether the contractor submits all quotations received from DBEs or WBEs, and for those quotations not accepted, an explanation of why the DBE or WBE will not be used during the course of the contract. Receipt of a lower quotation from a non-DBE or non-WBE will not in itself excuse a contractor's failure to meet contract goals.

vi. Whether the contractor assisted interested DBEs and WBEs in obtaining any required bonding, lines of credit, or insurance.

vii. Whether the contractor elected to subcontract types of work that match the capabilities of solicited DBEs or WBEs.

viii. Whether the contractor's efforts were merely pro forma and given all relevant circumstances, could not reasonably be expected to produce sufficient DBE and WBE participation to meet the goals.

ix. Whether the contractor has on other contracts within the past six months utilized DBEs and WBEs.

This list is not intended to be exclusive or exhaustive and the Department will look not only at the different kinds of efforts that the contractor has made but also the quality, quantity and intensity of these efforts.

5. A certified DBE who is the apparent low bidder on a contract with DBE goals satisfies the DBE goals. A certified WBE who is the apparent low bidder on a contract with WBE goals satisfies the WBE goals.

6. Contractors shall make good faith efforts to replace a DBE or WBE subcontractor that is unable to perform successfully with another certified DBE or WBE. Any such substitution of subcontractors shall be approved by the Department.

7. The Department shall count DBE and WBE participation toward meeting DBE and WBE goals as follows:

a. The total dollar value of the contract to be awarded to the certified DBE or WBE may be counted toward the applicable DBE or WBE goal.

b. A portion of the total dollar value of a contract with a joint venture eligible under this rule chapter equal to the percentage of the ownership and control of the DBE or WBE partner in the joint venture may be counted toward the DBE or WBE goal.

c. Only expenditures to DBEs and WBEs that perform a commercially useful function in the work of a contract may be counted toward the DBE and WBE goal. A DBE or WBE is considered to perform a commercially useful function when it actually performs and manages at least 51 percent of the work subcontracted to it. To determine whether a DBE or WBE is performing a commercially useful function, the Department shall evaluate all relevant factors such as the amount of work subcontracted and industry practices.

d. Consistent with normal industry practices, a DBE or WBE may enter into subcontracts. If a DBE or WBE subordinates 50 percent or more of the work of the subcontract, the DBE or WBE shall be presumed not to be performing a commercially useful function. This presumption is rebuttable.

e. Expenditures for materials and supplies obtained from DBE or WBE suppliers and manufacturers may be counted toward the DBE or WBE goal, provided that the DBEs or WBEs assume the actual and contractual responsibility for the provision of the materials and supplies.

f. Expenditures to a DBE or WBE

manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale) may be counted toward the DBE or WBE goal.

g. Twenty percent of the contractor's expenditures to DBE or WBE suppliers that are not manufacturers, may be counted toward the DBE or WBE goal, provided that the DBE or WBE supplier performs a commercially useful function in the supply process.

(3) The Department shall compile and make available a directory to contractors and other interested persons listing all DBEs and WBEs certified by the Department. A copy of the directory may be obtained from the Liaison Officer, Office of Minority Programs, Haydon Burns Building, Tallahassee, Florida 32301, (904) 488-3145.

(4) In furtherance of the purpose of this rule chapter, the contractor shall have the following responsibilities:

(a) The contractor shall implement a DBE and WBE program containing the following elements:

1. A policy statement, expressing a commitment to use DBEs and WBEs in all aspects of contracting to the maximum extent feasible. The contractor's policymaking body shall issue a policy statement, signed by the chairperson, which expresses its commitment to utilize DBEs and WBEs, outlines the various levels of responsibility, and states the objectives of the program. The contractor's policy statement shall be circulated throughout the contractor's organization.

2. The designation of a liaison officer within the contractor's organization, as well as such support staff as may be necessary and proper to administer the program, and a description of the authority, responsibility, and duties of the liaison officer and support staff. The liaison officer and staff shall be responsible for developing, managing, and implementing the program on a day-to-day basis; for carrying out technical assistance activities for DBEs and WBEs; and for disseminating information on available business opportunities so that DBEs and WBEs are provided an equitable opportunity to participate in contracts let by the Department. Techniques to facilitate DBE and WBE participation in contracting activities shall include but not be limited to:

a. Soliciting price quotations and arranging a time for the review of plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of quotations.

b. Providing assistance to DBEs and WBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance.

c. Carrying out information and communication programs or workshops on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

d. Encouraging eligible DBEs and WBEs to apply for certification with the Department.

e. Contacting Minority Contractor Associations and city and county agencies with programs for disadvantaged individuals or women for assistance in recruiting and encouraging eligible DBE and WBE contractors to apply for certification with the Department.

(b) The contractor shall submit its DBE and WBE program to the Department for approval prior to or with its first bid submission and shall update its program annually.

1. No contract shall be awarded to a contractor until after its DBE and WBE program has been approved by the Department.

2. The contractor's DBE and WBE program and the contractor's commitment to carry out its program shall be incorporated into and become a part of any contract awarded by the Department. Failure to keep these commitments shall be deemed noncompliance with this rule chapter and breach of the contract.

(c) The contractor shall develop a record keeping system to monitor its DBE and WBE affirmative action efforts.

1. The records maintained by the contractor shall include:

a. the procedures adopted to comply with this rule chapter;

b. the number of subordinated contracts on department projects awarded to DBEs and WBEs;

c. the dollar value of the contracts awarded to DBEs and WBEs;

d. the percentage of the dollar value of all subordinated contracts awarded to DBEs and WBEs as a percentage of the total contract amount;

e. a description of the general categories of contracts awarded to DBEs and WBEs; and

f. the specific efforts employed to identify and award contracts to DBEs and WBEs.

2. Records relating to firms owned and controlled by socially and economically disadvantaged individuals shall be maintained separately from records relating to firms owned and controlled by women.

3. The records maintained by the contractor in accordance with this rule shall be provided upon request to the Department for review.

Specific Authority 339.0805(5) FS. Law Implemented 339.0805 FS. History—New 12-9-81, Amended 5-23-84, 1-10-85.

Editorial Note: The above rule supersedes the rule as set out in the 1983 pocket part.

14-78.05 Standards for Certification of DBEs and WBEs.

(1) To ensure that this rule chapter benefits only small business concerns which are at least 51 percent owned and controlled in both form and substance by one or more socially and economically disadvantaged individuals or women, the Department shall certify firms who wish to participate as DBEs or WBEs under this rule chapter.

(2) Each business, including the DBE or WBE partner in a joint venture, wishing to participate as a DBE or WBE in department contracts shall complete and submit a Schedule A — Certification Form No. 1. Each entity wishing to participate as a joint venture DBE or WBE in Department contracts shall, in addition, complete and submit a Schedule B — Certification Form No. 2. The schedule(s) shall be signed by the authorized representative of the business entity and notarized.

(3) A firm seeking certification as a DBE or a WBE shall meet the following standards:

(a) The firm must be a small business concern as defined by Section 3 of the Small Business Act (15 U. S. C. 632) and Title 13 C. F. R. Part 121, which regulations are hereby incorporated by reference and made a part of these rules.

(b) The firm must be at least 51 percent owned and controlled by one or more women or socially and economically disadvantaged individuals, or, in the case of a publicly owned business, at least 51 percent of the stock must be owned and controlled by one or more women or socially and economically disadvantaged individuals.

1. Members of the groups named in Rule 14-78.02(1) are presumed to be socially and economically disadvantaged; provided, however, this presumption is rebuttable. Membership in those groups shall be established on the basis of the individual's claim that he or she is a member of one of those groups and is so regarded by that particular community. However, the Department is not required to accept this claim if it determines the claim invalid.

2. Individuals certified by the Small Business Administration, pursuant to Section 8(a) of the Small Business Act (15 U. S. C. 637), as socially and economically disadvantaged, shall be accepted as socially and economically disadvantaged individuals for purposes of this rule chapter.

(c) To be certified under this rule chapter, a DBE or WBE shall be an independent business entity. The ownership and control exercised by socially and economically disadvantaged individuals or by the women shall be real, substantial, and continuing, and shall go beyond mere pro forma ownership of the firm, as reflected in its ownership documents. The socially and economically disadvantaged individuals or women owners shall enjoy the customary incidence of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of financial and managerial arrangements. In assessing business independence, the Department shall consider all relevant factors, including the date the firm was established, the adequacy of its resources, and the degree to which financial relationships, equipment leasing, and other business relationships with non-DBE or non-WBE firms vary from industry practice.

(d) For purposes of establishing a corporation as a certified DBE or WBE under this rule chapter, all securities which constitute ownership or control by socially and economically disadvantaged individuals or women shall be held directly by socially and economically disadvantaged individuals or women. No securities held in trust, or by any guardian for a minor, shall be considered as held by socially or economically disadvantaged individuals or by women in determining the ownership or control of a corporation. Recognition of the enterprise as a separate entity for tax or corporate purposes is not necessarily sufficient for certification as a DBE or WBE under this rule chapter.

(e) To be certified under this rule chapter, the DBE or WBE shall be one in which the socially and economically disadvantaged individual or woman owner shall also possess the power to direct or cause the direction of the management, policies, and operations of the firm and to make day-to-day as well as major business decisions concerning the firm's management, policy, and operation. The discretion of the socially and economically disadvantaged individual or women owners shall not be subject to any formal or informal restrictions (including, but not limited to, bylaw provisions, partnership agreements, trust agreements or charter requirements for cumulative voting rights or otherwise) which would vary managerial discretion customary in the industry.

In determining whether the socially and economically disadvantaged individual or women owners also possess the power to direct or cause the direction of the management, policies and operations of the firm and have the requisite decision-making authority, the Department may look to the control lodged in the owners who are not socially and economically disadvantaged individuals or women. If the owners who are not socially and economically disadvantaged individuals or women are disproportionately responsible for the operation of the enterprise or if there exists any requirement which prevents the socially and economically disadvantaged individual or women owners from making business decisions without concurrence of any owner or employee who is not a socially and economically disadvantaged individual or a woman, then the enterprise, for purposes of this rule chapter, is not controlled by socially and economically disadvantaged individuals or women and shall not be considered a DBE or WBE within the meaning of this rule chapter. Where the actual management of the enterprise is contracted out to individuals other than the owner(s), those persons who have the ultimate power to hire and fire the managers can be considered as controlling the enterprise for the purposes of this rule chapter.

(f) To be certified under this rule chapter, the DBE or WBE shall be one in which the contributions of capital or expertise invested by the socially and economically disadvantaged individual or women owners are real and substantial. Examples of insufficient contributions include, but are not limited to, a promise to contribute capital, a note payable to the DBE or WBE enterprise or its owners who are neither socially and economically disadvantaged individuals nor women, or the mere participation as an employee, rather than as a decision-maker.

(g) In addition to the above standards, the Department shall give special consideration to the following circumstances:

1. Newly formed firms and firms whose ownership or control has changed shall be closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.

2. A previous or continuing employer-employee relationship between or among present owners shall be carefully reviewed to ensure that the employee-owner has sufficient management responsibilities and capabilities.

3. Any relationship between an applicant and a non-DBE or a non-WBE which has an interest in the enterprise seeking certification shall be carefully reviewed to determine if the interest of the non-DBE or non-WBE conflicts with the ownership and control requirements of this rule chapter.

(4) A joint venture is eligible under this rule chapter if the DBE or WBE partner of the joint venture is a certified DBE or WBE and if the DBE or WBE partner in the joint venture is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks, and profits of the joint venture.

(5) DBEs and WBEs certified by the Department shall, for a minimum of three years, maintain and make available to the Department, upon request, the following records:

(a) A copy of all contractors' initial solicitation of quotations for contracts to be let by the Department and any subsequent communications regarding such solicitations.

(b) A copy of all quotations or other correspondence submitted to contractors by DBEs or WBEs for contracts to be let by the Department.

Specific Authority 20.05(5), 334.02(6), 339.05, 339.081(4) FS. Law Implemented 334.021, 339.05, 339.081(4) FS. History—New 12-9-81, Amended 5-23-84.

Editorial Note: The 5-23-84 amendment entirely superseded the former rule.

14-78.07 Procedure for Certification.

(1) All firms, including the DBE or WBE partner in a joint venture, shall complete and submit a Schedule A — Certification Form No. 1. Firms wishing to participate as a joint venture shall in addition complete and submit a Schedule B — Certification Form No. 2. The schedule(s) shall be signed by the authorized representative of the business entity and notarized. A firm certified by the Small Business Administration shall in

addition submit a copy of the letter approving the firm's participation in the Small Business Administration Section 8(a) program.

(2) The following procedures shall be applicable to any application for certification as a DBE or WBE:

(a) Within 30 days after receipt of an application, the Department shall examine the application and notify the applicant in writing of any apparent errors or omissions and request any needed additional information.

(b) The Department may make such inquiries and investigations as deemed necessary and may conduct an on site review to verify and evaluate the information provided by the applicant.

(c) The Department shall approve or deny every application for certification as a DBE or WBE within 90 days after receipt of the original application or receipt of the timely requested additional information or correction of errors or omissions.

(d) The 90-day period shall be tolled by the initiation of a proceeding under Section 120.57, F. S. and shall resume 10 days after the recommended order is submitted to the Department and all parties.

(3) Certification of DBE or WBE status shall be for a maximum of one year.

(4) Firms which are 100 percent owned and controlled by individuals in the groups listed in Rule 14-78.02(1) or firms which are 100 percent owned and controlled by women may, upon request, be issued a temporary certification within 30 days after the Department's receipt of an application. A temporary certificate shall be for a maximum of 90 days.

(5) Certification is conditioned upon continued eligibility. At least 30 days prior to the expiration of its certification, a DBE or WBE shall submit a new Schedule A — Certification Form No. 1 and if a joint venture, a new Schedule A — Certification Form No. 1 and a new Schedule B — Certification Form No. 2.

(6) At any time there is a change in ownership or control of the firm, the DBE or WBE shall, within 30 days following the change, submit a new Schedule A and if a joint venture a new Schedule A and B to the Department for review and approval.

(7) If the Department intends to deny an application for certification as a DBE or WBE, the Department shall provide, by certified mail, return receipt requested, or by personal delivery to the office of the applicant, notice of the facts which warrant such action.

(a) The written notice of denial of an application for certification shall contain:

1. The particular facts or basis for denial of the application.

2. A statement that the applicant has the right to an administrative hearing pursuant to Section 120.57, F. S.

3. A statement that the denial shall become conclusive and final agency action if no request for a hearing is filed within 15 days of receipt of the notice of denial.

(b) All requests for hearing shall be made in writing and shall be filed with the Clerk of Agency Proceedings within 15 days of receipt of the notice of denial of the application and shall include:

1. The name and address of the party making the request;

2. A statement that the party is requesting a formal proceeding pursuant to Section 120.57(1), F. S. or an informal proceeding pursuant to Section 120.57(2) F. S.; and

3. A reference to the notice of denial of the application.

(c) If the applicant fails to file a request for a hearing within 15 days after receipt of the notice of denial of the application, the denial shall become conclusive and final agency action.

(8) A third person may challenge the socially and economically disadvantaged status of any individual, except an individual holding a current Section 8(a) certification from the Small Business Administration, certified by or seeking certification from the Department and presumed to be socially and economically disadvantaged.

(a) The challenge shall be in writing and shall include:

1. The name and address of the party making the challenge;

2. The name of the person being challenged;

3. A statement setting forth the reasons the challenge is being made.

(b) Upon receiving a challenge the Department shall notify the challenged party in writing by certified mail, return receipt requested, or personal delivery to the office of the challenged party, that his status as a socially and economically disadvantaged individual has been challenged and that information may be submitted to the Department in rebuttal to the challenge within 15 days of receipt of the notice. A copy of the challenge shall be provided with the notice.

(c) All information submitted in rebuttal to a challenge shall be in writing.

(d) The Department shall review and verify to the extent possible all information submitted to it. If the Department determines that the challenged party is socially and economically disadvantaged, the Department shall so inform all parties in writing. If the Department determines that the challenged party is not socially and economically disadvantaged, the Department shall deny any pending application for certification or if certification has been granted, shall initiate suspension or revocation proceedings pursuant to Rule 14-78.08.

(e) During the pendency of a challenge the presumption that the challenged party is socially and economically disadvantaged shall remain in effect.

Specific Authority 20.05(5), 120.57, 334.02(6), 339.081(4) FS. Law Implemented 334.021, 339.05, 120.60, 339.081(4) FS. History—New 12-9-81, Amended 5-23-84.

***Editorial Note:** The 5-23-84 amendment entirely superseded the former rule.*

14-78.08 Suspension or Revocation.

(1) The Department may suspend, for a specified period of time, or revoke the Department's certification of DBE or WBE status if it finds:

(a) The DBE or WBE no longer meets the certification standards set forth in Rule 14-78.05.

(b) The DBE or WBE willfully made a false, deceptive, or fraudulent statement in its application for certification or in any other information submitted to the Department.

(c) The DBE or WBE fails to maintain the records required by Rule 14-78.05(5).

(d) The DBE or WBE fails to perform a commercially useful function on projects for which the DBE or WBE is utilized to satisfy contract goals.

(e) The DBE or WBE fails to fulfill its contractual obligations with contractors.

(f) The DBE or WBE fails to respond to any requests for bid quotations from contractors for three consecutive lettings. For purposes of this provision a statement of noninterest or a bid quotation will be considered a response.

(2) Prior to suspending or revoking certification as a DBE or WBE, the Department shall inform the DBE or WBE in writing by certified mail, return receipt requested, or personal delivery to the office of the DBE or WBE, of the facts or conduct which warrant such action.

(3) The written notice issued by the Department shall contain:

(a) The statutory provision(s) or rule(s) of the Florida Administrative Code which is alleged to have been violated.

(b) The specific facts or conduct relied upon to justify the revocation or suspension.

(c) A statement that the DBE or WBE has the right to file a request for an administrative hearing pursuant to Section 120.57, F. S. within 15 days of receipt of the notice of revocation or suspension.

(d) A statement that the suspension or revocation shall become conclusive and final agency action if no request for a hearing is filed within 15 days of receipt of the notice of revocation or suspension of certification.

(4) All requests for a hearing shall be made in writing and shall be filed with the Clerk of Agency Proceedings within 15 days of receipt of the notice of suspension or revocation of certification. The request shall include:

(a) The name and address of the DBE or WBE making the request;

(b) A statement that the DBE or WBE is requesting a formal proceeding pursuant to Section 120.57(1), F. S. or an informal proceeding pursuant to Section 120.57(2), F. S.; and

(c) A reference to the notice of revocation or suspension of certification received from the Department and a statement of the specific grounds on which the proposed action is being challenged.

(5) If the DBE or WBE fails to file a request for a hearing within 15 days after receipt of the notice of revocation or suspension of certification, the suspension or revocation shall become conclusive and final agency action.

Specific Authority 120.57, 20.05(5), 334.02(6), 339.081(4) FS. Law Implemented 334.021, 339.05, 339.081(4) FS. History—New 12-9-81, Amended 5-23-84.

***Editorial Note:** The 5-23-84 amendment entirely superseded the former rule.*

14-78.081 Federal Appeal Rights. In addition to the other remedies provided in this rule chapter, any person adversely affected by any action taken by the Department may exercise the appeal rights granted in 49 C. F. R. Part 23.

Specific Authority 120.57, 20.05(5), 334.02(6), 339.081(4) FS. Law Implemented 334.021, 339.05, 339.081(4) FS. History—New 5-23-84.

14-78.09 Forms. The following forms are to be used by firms when applying for certification as a DBE or WBE:

SCHEDULE A — Certification Form No. 1

SCHEDULE B — Certification Form No. 2 — Information for Determining Joint Venture Eligibility.

Copies of these forms, effective upon the effective date of this rule chapter, may be obtained by contacting the Liaison Officer, Office of Minority Programs, Haydon Burns Building, Tallahassee, Florida 32301, (904) 488-3145.

Specific Authority 20.05(5), 334.02(6), 120.53, 339.081(4) FS. Law Implemented 334.021, 339.05, 339.081(4) FS. History—New 12-9-81, Amended 5-23-84.

FLORIDA DEPARTMENT OF TRANSPORTATION
DBE/WBE CERTIFICATION SCHEDULE A

NAME OF COMPANY: ____________________

ADDRESS OF COMPANY: ____________________
(No. & Street) (City) (State & Zip)

MAILING ADDRESS: ____________________
(No. & Street) (City) (State & Zip)

BUSINESS TELEPHONE: ____________________
(Area Code) (Number)

CONTACT PERSON: ____________________

1. DATE COMPANY WAS ESTABLISHED: ____________________
(Month) (Day) (Year)

2. NATURE OF BUSINESS: Specify the type of work performed by the company.

____

____

3. GEOGRAPHICAL AREA SERVED: List states and counties in which the company works.

____

4. CURRENT NUMBER OF EMPLOYEES ON THE PAYROLL:

Full-time ______ Part-time ______

5. IS THE COMPANY LICENSED TO DO BUSINESS IN FLORIDA? YES ____ NO ____

If yes, attach one copy of the license to this application and complete the following:

TYPE OF LICENSE: ______________ NUMBER: ______________

6. HAS THE COMPANY OR ANY OF ITS OWNERS RECEIVED 8(A) CERTIFICATION FROM THE SMALL BUSINESS ADMINISTRATION?

YES ______ NO ______ If yes, attach one copy of the designation letter to this application.

7. TYPE OF BUSINESS ARRANGEMENT: Specify the company's form of business.

Sole Proprietorship ____ Partnership ____ Corporation ____

8. COMPLETE THE FOLLOWING INFORMATION AS INDICATED BY YOUR RESPONSE IN ITEM NUMBER 7.

(a) Sole Proprietorship: Attach any and all such documentation to show proprietorship as stated.

(b) Partnership: Describe the interest of each partner if all are not equal general partners. Attach any and all such agreements to show partnership as described below.

____

____

____

(c) Corporation: Complete in full and provide attachments as requested.

The company is authorized to issue __________ shares of stock. The company has issued __________ shares of stock to date.

Is any holder of stock in the corporation a party to any agreement relating to the management or control of the corporation, the rights of the holders of any class of stock of the corporation or the sale, transfer, or transferability of any stock of the corporation?

YES ______ NO ______

Is any stock of the corporation pledged, subject to any lien agreement or benefically owned by anyone other than the person whose name it stands?

YES ______ NO ______

Attach one copy of the company's ARTICLES OF INCORPORATION and BY-LAWS to this application.

Attach one copy of all the company's issued shares of stock CERTIFICATES to this application.

9. FEDERAL EMPLOYER TAX IDENTIFICATION NUMBER: State number below.

____

10. IDENTIFY ALL PROPRIETORS, PARTNERS, AND STOCKHOLDERS BY NAME, SOCIAL SECURITY NUMBER, SEX, ETHNIC GROUP STATUS, AND PERCENTAGE OF OWNERSHIP HELD.

NAME	SS#	SEX	ETHNIC GROUP	% OWNED

11. ETHNIC GROUP OWNERSHIP: Specify the ethnic group and percentage of ownership of the person(s) who OWNS and CONTROLS 50% or more of the company.

Black American __________ %

Hispanic American __________ %

Native American __________ %

Asian-Pacific American __________ %

Asian-Indian American __________ %

12. IDENTIFY EACH OWNER'S TITLE/POSITION, LENGTH OF SERVICE, AND CURRENT EMPLOYMENT.

NAME	TITLE/POSITION	NO. OF YEARS	CURRENTLY EMPLOYED BY

13. Identify any owner in the company who has an ownership interest of 15% or more in another company.

(a) ________________ (b) ________________ (c) ________________

14. Attach detailed resumes and/or work histories for each of the persons listed in item numbers 10, 11, 12, and 13. Resumes and/or work histories must include a description of the qualifications and previous business related experiences of each.

15. SPECIFY THE COMPANY'S BONDING LIMIT: $ ________________

16. Identify the company's current bonding company, insurance company, banking institution, and any other source(s) from which capital has been obtained for use by the company.

	COMPANY NAME	ADDRESS-CITY-ST	CONTACT PERSON
BONDING:			
INSURANCE:			
BANK:			
OTHER:			

17. ANNUAL GROSS RECEIPTS: Specify the receipts for the past three (3) years.

(a) Year ending ____________ Total receipts $ ________________

(b) Year ending ____________ Total receipts $ ________________

(c) Year ending ____________ Total receipts $ ________________

18. Attach one copy of the company's financial statement for the past year to this application.

19. NEWLY FORMED COMPANIES UNABLE TO PROVIDE THE INFORMATION REQUESTED IN ITEM NUMBERS 17 AND 18, MUST PROVIDE THE PERSONAL FEDERAL TAX RETURNS OF THE INDIVIDUAL OWNERS OF THE COMPANY.

20. Identify the three (3) largest contracts completed by the company or three (3) contracts currently underway by the company.

TYPE OF WORK CONTRACTED	DATE	LOCATION	DOLLAR AMOUNT

21. SPECIFY THE MAJOR ITEMS OF EQUIPMENT OWNED AND/OR LEASED BY THE COMPANY:

ITEM OF EQUIPMENT	QUANITY	OWNED	LEASED

22. Are there any written, oral, tacit agreements concerning the financial operation and control of the company?

YES _____ NO _____ If yes, all agreements if not in writing be they oral, tacit, or otherwise shall be reduced to writing and attached to this application.

23. Has this company or any other company with one or more of the same owners been denied certification by the Florida Department of Transportation?

YES _____ NO _____ If yes, state the circumstances of the denial.

____

____

____

THE FOLLOWING ATTACHMENTS ARE TO BE SUBMITTED ALONG WITH THE CERTIFICATION APPLICATION. FAILURE TO DO SO WILL RESULT IN THE RETURN OF THE APPLICATION.

(a) Provide a list of the company's full-time and part-time employees by name, title, and length of service.

(b) Provide one copy of the company's operating license.

(c) If 8(A) certified, provide one copy of the designation letter.

(d) Provide documentation requested in Item Number 8 (a), (b), and (c) as dictated by your response in Item Number 7.

(e) Provide documentation of the ethnic group status of the owner(s), which may consist of a birth certificate, diver's license, or any and all other documents that state the individuals race and ethnic origin.

(f) Provide detailed resumes and/or work histories for each owner.

(g) Provide one copy of the company's financial statement for the past year.

(h) Newly formed companies unable to provide financial statements, must provide the personal federal tax returns (for the past year) of each owner.

(i) Provide one copy of the company's federal tax return for the past year.

(j) Provide one copy of the company's payroll for the month prior to submitting this application.

(k) Provide one copy of the company's payroll for the sixth month prior to submitting this application.

READ CAREFULLY: The following statement is to be read carefully inorder that the company understands its responsibility as a certified DBE/WBE. Signature of the owner(s) is required.

I ____________________ UNDERSTAND THAT MY COMPANY, IF CERTIFIED AS A DBE/WBE COMPANY BY THE FLORIDA DEPARTMENT OF TRANSPORTATION, IS REQUIRED TO BE A RESPONSIVE BIDDER IN THE DEPARTMENT'S CONTRACTING PROGRAM. MY FAILURE TO RESPOND TO THE REQUEST FOR BIDS IN THE GEOGRAPHICAL AREAS IN WHICH I DO BUSINESS AND IN WORK CLASSES FOR WHICH I AM CERTIFIED TO PERFORM, WILL RESULT IN THE TERMINATION OF MY CERTIFIED STATUS. MY EFFORTS TO OBTAIN WORK WITH THE DEPARTMENT WILL BE DOCUMENTED BY ME IN THE EVENT THIS SITUATION SHOULD OCCUR. QUESTIONS CONCERNING MY RESPONSIVENESS AS A BIDDER WILL BE DIRECTED TO MS. WYNN AT 904-488-3145.

____________________ (Signature)

____________________ (Date)

AFFIDAVIT

The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of ______________________________ as well as the ownership thereof. Further, the undersigned agrees to provide through the prime contractor or, if no prime contractor, directly to the Department, current, complete, and accurate information regarding actual work performed on the project, the payment there for and any proposed changes, if any, of the foregoing arrangements and to permit the audit and examination of books, records and files of the named company.

Furthermore, I understand that I may not:

(a) fraudulently obtain, retain, attempt to obtain nor aid another in fraudulently obtaining or retaining or attempting to obtain certification;

(b) willfully make a false statement, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of certification of any entity as a minority/disadvantaged business enterprise; or

(c) willfully obstruct, impede, or attempt to obstruct or impede any state official or employee who is investigating the qualifications of a business entity which has requested certification a minority/disadvantaged business enterprise.

(d) Any material misrepresentation will be grounds for initiating action under Federal or State laws concerning false statements.

SIGNATURE OF OWNER: ______________________________

NAME OF OWNER: ______________________________

TITLE/POSITION: ______________________________

DATE: ____________________

CORPORATE SEAL:

DATE: ______________________________

STATE OF: ______________________________

COUNTY OF: ______________________________

On this ____________ day of ____________, 19_____ before me

appeared (name) ______________________________ to me personally known,

who being duly sworn, did execute the foregoing affidavit, and did state that

he/she was properly authorized by (name of company) ____________________

to execute the affidavit and did so as a free act and deed.

(SEAL)

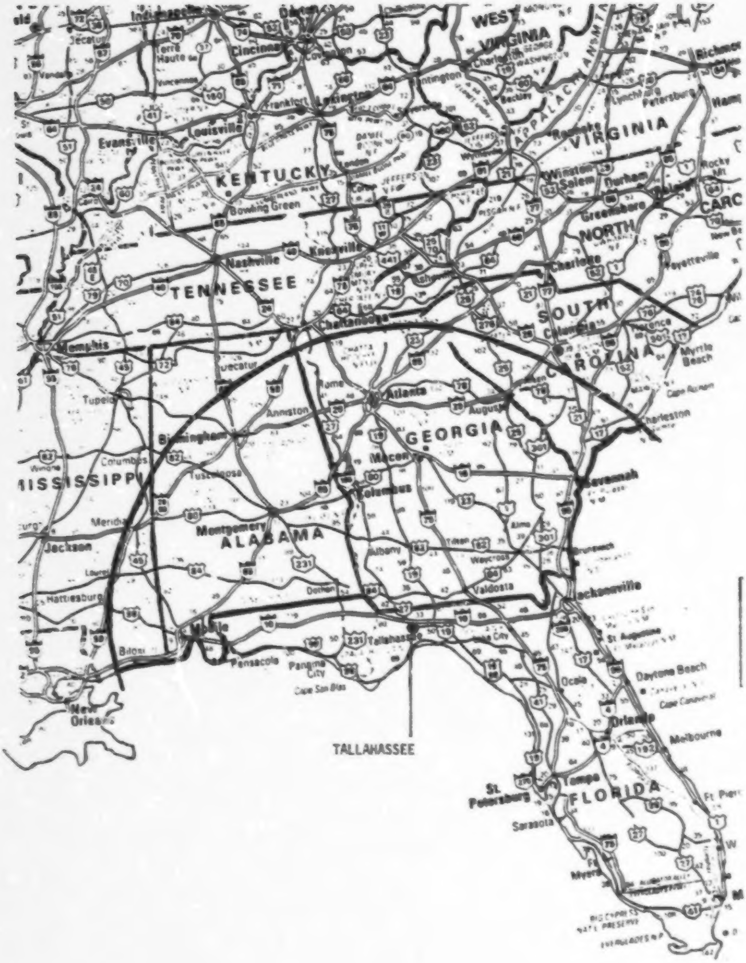
NOTARY PUBLIC: ______________________________

MY COMMISSION EXPIRES: ____________________

FORWARD APPLICATION TO:

FLORIDA DEPARTMENT OF TRANSPORTATION
BUREAU OF MINORITY PROGRAMS, MS 65
605 SUWANNEE STREET
TALLAHASSEE, FLORIDA 32301

NOTE: QUESTIONS CONCERNING THE APPLICATION MAY BE DIRECTED TO SHARON WYNN AT AREA CODE 904-488-3145. IT IS IMPORTANT THAT YOU FOLLOW THE INSTRUCTIONS CONTAINED IN THE APPLICATION. REQUESTS FOR DOCUMENTS MUST BE ADHERED TO; FAILURE TO RESPOND WILL RESULT IN THE RETURN OF THIS APPLICATION.


KENTUCKY
WEST VIRGINIA
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TENNESSEE
MISSISSIPPI
ALABAMA
GEORGIA
FLORIDA
TALLAHASSEE
Nashville
Knoxville
Memphis
Chattanooga
Atlanta
Birmingham
Montgomery
Macon
Columbus
Savannah
Jacksonville
Mobile
Pensacola
New Orleans
Orlando
Tampa
St. Petersburg
Charlotte
Columbia
Charleston

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FLORIDA DEPARTMENT OF TRANSPORTATION
MINORITY BUSINESS ENTERPRISE
CERTIFICATION REVIEW

DATE: ______________________________

TIME: ______________________________

LOCATION: ______________________________

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PURPOSE

THE PURPOSE OF THIS ON-SITE REVIEW IS TO SOLICIT INFORMATION FROM REPRESENTATIVES OF ______________________________ TO DETERMINE WHETHER THE OWNERSHIP AND CONTROL BY MINORITIES IS REAL, SUBSTANTIAL, AND CONTINUING AND EXCEED THE PRO FORMA OWNERSHIP REFLECTED IN THE CERTIFICATION FORM NO. I.

THE FOLLOWING PERSONS ARE THE OWNERS OR REPRESENTATIVES OF THE OWNERS:

NAME ____________________ TITLE ______________

NAME ____________________ TITLE ______________

NAME ____________________ TITLE ______________

NAME ____________________ TITLE ______________

FOR THE RECORD, PLEASE EXAMINE THIS FOLDER AND RESPOND TO WHETHER THE INFORMATION CONTAINED CONSTITUTES ALL DOCUMENTS SUBMITTED TO THE DEPARTMENT FOR THE PURPOSE OF OBTAINING CERTIFICATION AS A MINORITY BUSINESS ENTERPRISE.

RESPONSE: ______________________________

____

SPECIFY THE CHANGES THAT HAVE TAKEN PLACE, IF ANY: ______________

____

____

____

Page 2
On-Site Review

1) State the month, day, and year the company was established.

____

2) Identify the owner(s) by name, title, and percentage of ownership.

NAME	TITLE	%

3) Specify the ethnic group status of the owner(s).

NAME	ETHNIC GROUP STATUS

4) Is the company a partnership, corporation, sole proprietorship, or other business enity?

____

5) Has the company ever made a change in ownership? YES ___ NO ___

If YES, specify the name(s) of the previous owner(s).

____

____

Page 3
On-Site Review

6) Specify the reason(s) this change in ownership took place.

7) Specify the nature of agreements made in the transfer of ownership. Include financial, equipment, personnel, space, etc.

8) Is the company currently operating under the license of the previous owner?

YES ____ NO ____ If yes, specify the nature of agreement for such an arrangement.

9) Is the company currently operating under a license?

YES ____ NO ____ If yes, specify the type and and name in which the license was obtained.

10) Does the company own or lease its' present location? If leasing, identify the owner and state the nature of the lease agreement.

11) Specify the particular tasks carried out by each owner of the company.

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12) Identify the last employer of each of the owners and include the title under which tasks were performed.

NAME ____________________ TITLE ____________________

____

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____

13) State the contributions of capital, equipment, space, expertise, etc., of each owner, to acquire his/her interest in the company.

14) State the major items of equipment owned by the company.

15) What is the approximate dollar value of the items of equipment owned by the company?

16) Under whose signature were the major items of equipment obtained?

17) Who determines the jobs to bid?

18) Who prepares the estimates?

19) Who subcontracts the work?

20) State the number of employees currently employed by the owners.

FULL-TIME PART-TIME

21) State the approximate dollar amount of work completed or presently underway for the Florida Department of Transportation.

22) Identify the company's bonding source and bonding limit.

23) Does any owner of the company have an ownership interest in another company?

YES _____ NO _____ If yes, identify the company and state the percentage of ownership held.

24) Is the company being assisted financially or otherwise by anyone other than the owners?

YES _____ NO _____ If yes, identify the source and nature of assistance being provided.

25) Who negotiates financing for the company?

26) Who obtained bonding and insurance for the company?

27) Who signs the payroll?

28) Under whose signature are creditors paid?

29) What is the approximate dollar value of the company?

30) Identify three (3) major creditors with whom you purchase, lease, and/or presently owe.

____

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____

31) Identify the company's banking and/or loan institution.

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____

32) Is the company certified as a Minority Business Enterprise in another city, county, or state?

YES _____ NO _____ PENDING _____

33) Has the company been denied certification as a Minority Business Enterprise in another city, county, or state?

YES _____ NO _____ If yes, identify the certifying authority and state the circumstances of the denial.

____

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____

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On-Site Review

COMMENTS:

SUNSHINE STATE HIGHWAY CONSTRUCTION COMPANY
DBE/WBE AFFIRMATIVE ACTION PLAN

POLICY STATEMENT

It is the policy of Sunshine State Highway Construction Company that disadvantaged and women-owned businesses, as defined by 49CFR Part 23, Subpart D and implemented under Rule Chapter 14-78, shall have the maximum opportunity to participate as subcontractors and suppliers on all contracts awarded by the Florida Department of Transportation.

The requirements of Chapter 14-78 shall apply to all contracts entered into between the Department of Transportation and Sunshine State Highway Construction Company. Subcontractors and/or suppliers to the Sunshine State Highway Construction Company will also be bound by the requirements of Chapter 14-78.

Sunshine State Highway Construction Company, and its subcontractors shall take all necessary and reasonable steps in accordance with Chapter 14-78, to ensure that disadvantaged and women-owned businesses have the maximum opportunity to compete and perform work contracted with the Florida Department of Transportation.

Sunshine State Highway Construction Company and its subcontractors shall not discriminate on the basis of race, color, religion, national origin, handicap, or sex in the administration of the contracts with the Florida Department of Transportation.

Sunshine State Highway Construction Company has designated and appointed a Liaison Officer to develop, maintain, and monitor the DBE/WBE Affirmative Action Plan's implementation. The Liaison Officer will be responsible for disseminating this policy statement throughout Sunshine State Highway Construction Company and, to disadvantaged and women-owned and controlled businesses. This policy statement is posted on notice boards of the Company.

Sharon Wynn

Sharon Wynn, President
Sunshine State Highway Construction Co.
605 Suwannee Street
Mail Station 65
Tallahassee, Florida 32301

I. DESIGNATION OF LIAISON OFFICER

Sunshine State Highway Construction Company will aggressively recruit disadvantaged and women-owned businesses as subcontractors and suppliers for all contracts with the Department of Transportation. The Company has appointed a Liaison Officer to develop and maintain this Affirmative Action Plan in accordance with the requirements of Chapter 14-78.

The Liaison Officer will have primary responsibility for developing, maintaining, and monitoring the Company's utilization of disadvantaged and women-owned business subcontractors in addition to the following specified duties.

(1) The Liaison Officer shall aggressively solicit bids from disadvantaged and women-owned business subcontractors for all Department of Transportation contracts.

(2) The Liaison Officer will submit all records, reports, and documents required by the Department, and shall maintain such records for a period not less than three years, or as directed by any specific contractual requirement of the Department.

The following individual has been designated Liaison Officer with responsibility for implementing the Company's affirmative action program in accordance with the requirements of the Department.

Sharon Wynn
Sunshine State Highway Construction Co.
605 Suwannee Street, Mail Station 65
Tallahassee, Florida 32301
904-488-3145

II. AFFIRMAT[illegible] METHODS

In order t[illegible] Affirmative Action Plan, Sunshine State Highway Constru[illegible] identified the following known barriers to participation by minority and women subcontractors, before describing its proposed affirmative action methods.

1. Lack of qualified minority and women subcontractors in our specific geographical areas of work.
2. Lack of certified minority and women subcontractors who seek to perform DOT work.
3. Lack of interest in performing DOT work.
4. Lack of response when requested to bid.
5. Limited knowledge of DOT plans and specifications to prepare a responsible bid.

In view of the barriers to disadvantaged and women-owned businesses stated above, it shall be the policy of the Sunshine State Highway Construction Company to provide maximum opportunity by utilizing the following affirmative action methods to ensure participation on contracts with the Department of Transportation. Sunshine State Highway Construction Company will,

1. provide written notice to a reasonable number of specific DBE/WBE subcontractors in all areas of work to be subcontracted by the company.
2. advertise in minority focused media concerning subcontract opportunities with the Company.
3. select portions of the work to be performed by DBEs in order to increase the likelihood of meeting contract goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
4. provide adequate information about the plans, specifications, and requirements of the contract, not rejecting subcontractors without sound reasons based on a thorough investigation of their capabilities.
5. waiver requirements of performance bonds where it is practical to do so.
6. attend pre-bid meetings held by the Department to appraise disadvantaged and women subcontractors of opportunities with the Company.
7. follow up on initial solicitations of interest to DBE/WBE

contractors to determine with certainty whether the company is interested in the subcontract opportunity.

Sunshine State Highway Construction Company understands that this list of affirmative action methods are not exhaustive and will include additional approaches after having established familiarity with the disadvantaged and women subcontracting community and/or determined the stated approaches to be ineffective.

III. IMPLEMENTATION

On contracts with specific DBE and WBE goals, or both, Sunshine State Highway Construction Company will make every effort to meet contract goals as stated by utilizing its affirmative action methods. On projects with no specific goals, the Company will as an expression of good faith seek to utilize DBE/WBE subcontractors where work is to be subcontracted.

IV. REPORTING

The Sunshine State Highway Construction Company shall keep and maintain such records as are necessary to determine the Company's compliance with its DBE/WBE Affirmative Action Plan.

The Company will design its record keeping system to indicate:

1. The number of DBE/WBE subcontractors and suppliers used by the Company, identifying the items of work, materials and services provided.
2. The efforts and progress being made in obtaining DBE/WBE subcontractors through local and community sources.
3. Documentation of all contracts, to include correspondence, telephone calls, newspaper advertisements, etc., to obtain DBE/WBE participation on all Department of Transportation projects.
4. The Company shall submit to the Department its utilization of minority and women contractors on Form 1405 - FDOT Contracts and Subcontracts Awarded to Minorities, no later

than the fifth (5th) day of each month. The Company understands that Form 1405 is a monthly requirement of all contractors when subcontracts are awarded to a DBE/WBE contractor.

V. DBE/WBE DIRECTORY

Sunshine State Highway Construction Company will utilize the DBE/WBE Directory published by the Department of Transportation.

The Company will distribute Certification Form No. 1 to potential DBE/WBE contractors and assist in their completion.

SPECIAL PROVISIONS
DISADVANTAGED BUSINESS ENTERPRISE
WOMAN BUSINESS ENTERPRISE

1. **PREPARATION OF PROPOSALS.**

ARTICLE 2-5 (Page 9) is expanded by the following new Subarticle:

2-5.3 AFFIRMATIVE ACTION PROGRAM PLAN:

2-5.3.1 General:

The Contractor shall submit its DBE and WBE Affirmative Action Program Plan to the Department for approval prior to or with its first bid submission and shall update its program annually.

No contract shall be awarded to a contractor until after its DBE and WBE Affirmative Action Program Plan has been approved by the Department.

The Contractor's DBE and WBE Affirmative Action Program Plan and the Contractor's commitment to carry out its program plan shall be incorporated into and become a part of any contract awarded by the Department. Failure to keep these commitments shall be deemed noncompliance with these Special Provisions and breach of the Contract.

2-5.3.2 Submittals for Contracts with Goals:

For all contracts for which DBE and/or WBE contract goals have been established, each contractor shall meet or exceed or demonstrate that it could not meet, despite its good faith efforts, the contract goals set by the Department. The DBE and WBE participation information shall be submitted with the Contractor's bid proposal. Award of the Contract shall be conditioned upon submission of the DBE and WBE participation information with the bid proposal and upon satisfaction of the contract goals or, if the goals are not met, upon demonstrating that good faith efforts were made to meet the goals.

The Contractor's bid submission shall include the following information (Submitted on Form No. 141-12 - DBE/WBE Utilization Form No. 1):

(1) The names and addresses of certified DBE and WBE firms that will participate in the contract. Only DBEs and WBEs certified by the Department at the time the bid is submitted may be counted toward DBE and WBE goals.

(2) A description of the work each named DBE and WBE firm will perform.

(3) The dollar amount of participation by each named DBE and WBE firm.

2-5.3.3 Submittals for Evaluating Good Faith Efforts:

If the DBE or WBE goal is not met, sufficient information to demonstrate that the Contractor made good faith efforts to meet the goals shall be submitted.

In evaluating a contractor's good faith efforts, the Department will consider:

(1) Whether the Contractor, at least seven days prior to the letting, provided written notice by certified mail, return receipt requested, or hand delivery, with receipt, to all certified DBEs and WBEs which perform the type of work which the Contractor intends to subcontract, advising the DBEs and WBEs (a) of the specific work the Contractor intends to subcontract; (b) that their interest in the contract is being solicited; and (c) how to obtain information about and review and inspect the contract plans and specifications.

(2) Whether the Contractor selected economically feasible portions of the work to be performed by DBEs or WBEs, including where appropriate, breaking down contracts or combining elements of work into economically feasible units. The ability of a contractor to perform the work with its own work force will not in itself excuse a contractor's failure to meet contract goals.

(3) Whether the Contractor provided interested DBEs or WBEs assistance in reviewing the contract plans and specifications.

(4) Whether the DBE or WBE goal was met by other bidders.

(5) Whether the Contractor submits all quotations received from DBEs or WBEs, and for those quotations not accepted, an explanation of why the DBE or WBE will not be used during the course of the contract. Receipt of a lower quotation from a non-DBE or non-WBE will not in itself excuse a contractor's failure to meet contract goals; provided however, a contractor's good faith efforts obligation does not require a contractor to accept a quotation from a DBE or WBE which exceeds the lowest quotation received from any subcontractor by more than one percent.

(6) Whether the Contractor assisted interested DBEs and WBEs in obtaining any required bonding, lines of credit, or insurance.

(7) Whether the Contractor elected to subcontract types of work that match the capabilities of solicited DBEs or WBEs.

(8) Whether the Contractor's efforts were merely pro forma and given all relevant circumstances, could not reasonably be

expected to produce sufficient DBE and WBE participation to meet the goals.

(9) Whether the Contractor has on other contracts within the past six months utilized DBEs and WBEs.

The above list is not intended to be exclusive or exhaustive and the Department will look not only at the different kinds of efforts that the Contractor has made but also the quality, quantity and intensity of these efforts.

2. DISQUALIFICATION OF BIDDERS.

ARTICLE 2-11 (Pages 10 and 11) is expanded as follows:

(h) Failure to satisfy the requirements of 2-5.3.

3. DISADVANTAGED AND WOMAN BUSINESS ENTERPRISE-AFFIRMATIVE ACTION.

SECTION 4 (Pages 14-22) is expended by the addition of the following Article:

4-7 DISADVANTAGED AND WOMAN BUSINESS ENTERPRISE -AFFIRMATIVE ACTION.

4-7.1 General:

The Contractor shall ensure that Disadvantaged and Woman Business Enterprises as defined herein and certified by the Department will have the maximum opportunity to participate in the performance of subcontracts. In this regard, the Contractor shall take all necessary and reasonable steps specified herein to ensure that Disadvantaged and Woman Business Enterprises certified by the Department have the maximum opportunity to compete for and perform subcontracts.

4-7.2 Definitions:

The following words and phrases shall have the respective meanings set forth below unless a different meaning is plainly required by the context:

(1) "Socially and economically disadvantaged individuals" means those individuals who are citizens of the United States or lawfully admitted permanent residents and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans, and any other minorities or individuals certified as disadvantaged by the Small Business Administration pursuant to Section 8 (a) of the Small Business Act (15 USC 637) and implementing regulations. Individuals in the following groups are presumed to be socially and economically disadvantaged:

(a) "Black Americans", which includes persons having origins in any of the black racial groups of Africa;

(b) "Hispanic Americans", which includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

(c) "Asian-Pacific Americans", which includes persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific and the Northern Marianas;

(d) "Native Americans", which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians.

(e) "Asian-Indian Americans", which includes persons whose origins are from India, Pakistan, and Bangladesh.

(2) "Disadvantaged Business Enterprise" or "DBE" means a small business concern, as defined by Section 3 of the Small Business Act (15 USC 632) and implementing regulations:

(a) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(3) "Woman Business Enterprise" or "WBE" means a small business concern, as defined by Section 3 of the Small Business Act (15 USC 632) and implementing regulations:

(a) Which is at least 51 percent owned by one or more women or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more women and

(b) Whose management and daily business operations are controlled by one or more of the women who own it.

(4) "Joint venture" means an association of two or more firms to carry out a single business enterprise for which purpose the firms combined their property, money, effects, skills or knowledge.

(5) "Certified" means a finding of qualification by the Department in accordance with the Department's Rule Chapter 14-78.

4-7.3 Specific Requirements:

4-7.3.1 All Projects:

The Contractor shall have the following responsibilites:

(1) The Contractor shall implement a DBE and WBE Affirmative Action Program Plan containing the following elements:

(a) A policy statement, expressing a commitment to use DBEs and WBEs in all aspects of contracting to the maximum extent feasible. The Contractor's policymaking body shall issue a policy statement signed by the chairperson, which expresses its commitment to utilize DBEs and WBEs, outlines the various levels of responsibility, and states the objectives of the program. The Contractor's policy statement shall be circulated throughout the Contractor's organization.

(b) The designation of a Liaison Officer within the Contractor's organization, as well as such support staff as may be necessary and proper to administer the program, and a description of the authority, responsibility, and duties of the Liaison Officer and support staff. The Liaison Officer and staff shall be responsible for developing, managing, and implementing the program on a day-to-day basis; for carrying out technical assistance activities for DBEs and WBEs and for disseminating information on available business opportunities so that DBEs and WBEs are provided an equitable opportunity to participate in contracts let by the Department. Techniques to facilitate DBE and WBE participation in contracting activities shall include, but not be limited to:

1. Soliciting price quotations and arranging a time for the review of plans, quantities, specifications, and delivery schedules, and for the preparation and presentation of quotations.

2. Providing assistance to DBEs and WBEs in overcoming barriers such as the inability to obtain bonding, financing, or technical assistance

3. Carrying out information and communication programs or workshops on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.

4. Encouraging eligible DBEs and WBEs to apply for certification with the Department.

5. Contacting Minority Contractor Associations and city and county agencies with programs for disadvantaged individuals or women for assistance in recruiting and encouraging eligible DBE and WBE contractors to apply for certification with the Department.

4-7.3.2 Projects where Goals are specified.

The Department will establish separate contract goals for firms owned and controlled by disadvantaged individuals and for firms owned and controlled by women.

The Department will count DBE and WBE participation toward meeting DBE and WBE goals as follows:

(1) The total dollar value of the contract to be awarded to the certified DBE or WBE may be counted toward the applicable DBE or WBE goal.

(2) A portion of the total dollar value of a contract, with an eligible joint venture, equal to the percentage of the ownership and control of the DBE or WBE partner in the joint venture may be counted toward the DBE or WBE goal.

(3) Only expenditures to DBEs and WBEs that perform a commercially useful function in the work of a contract may be counted toward the DBE and WBE goal. A DBE or WBE is considered to perform a commercially useful function when it actually performs and manages at least 51 percent of the work subcontracted to it.

To determine whether a DBE or WBE is performing a commercially useful function, the Department shall evaluate all relevant factors such as the amount of work subcontracted and industry practices.

(4) Consistent with normal industry practices, a DBE or WBE may enter into subcontracts. If a DBE or WBE subordinates 50 percent or more of the work-of the subcontract, the DBE or WBE shall be presumed not to be performing a commercially useful function.

(5) Expenditures for materials and supplies obtained from DBE or WBE suppliers and manufacturers may be counted toward the DBE or WBE goal, provided that the DBEs or WBEs assume the actual and contractural responsibility for the provision of the materials and supplies.

(6) Expenditures to a DBE or WBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale) may be counted toward the DBE or WBE goal.

(7) On non-Federal Aid projects twenty percent of the Contractor's expenditures to DBE or WBE suppliers that are not manufacturers may be counted toward the DBE or WBE goal, provided that the DBE or WBE supplier performs a commercially useful function in the supply process.

A certified DBE who is the apparent low bidder on a contract th DBE contract goals satisfies the DBE goals if the firm is a certified DBE. A certified WBE who is the apparent low bidder on a contract with WBE contract goals satisfies the WBE goals if the firm is a certified WBE.

4-7.3.3 Projects where no Goals are specified:

When there are no project goals, the Contractor shall make good faith efforts to afford Disadvantaged Business Enterprises and Woman Business Enterprises an oppurtunity to participate in the Contract in accordance with the Contractor's DBE and WBE Affirmative Action Program Plan.

4-7.4 Records and Reports:

The Contractor shall develop a record keeping system to monitor its DBE and WBE affirmative action efforts as follows:

(1) The records maintained by the Contractor shall include:

(a) the procedures adopted to comply with these special provisions;

(b) the number of subordinated contracts on Department projects awarded to DBEs and WBEs;

(c) the dollar value of the contracts awarded to DBEs and WBEs;

(d) the percentage of the dollar value of all subordinated contracts awarded to DBEs and WBEs as a percentage of the total contract amount;

(e) a description of the general categories of contracts awarded to DBEs and WBEs; and

(f) the specific efforts employed to identify and award contracts to DBEs and WBEs.

(2) Records relating to firms owned and controlled by socially and economically disadvantaged individuals shall be maintained separately from records relating to firms owned and controlled by women.

(3) The records maintained by the Contractor in accordance with this Section shall be provided upon request to the Department for review.

For those months during which DBEs and WBEs perform work, the Contractor shall submit the Department's DBE/WBE Utilization Report (Contracts and Subcontracts Awarded to DBE's/WBE's -Form 1405) by the 5th of the following month to the Department's DBE/WBE Liaison Officer in Tallahassee. Do not submit duplicate copies of eviously submitted 1405 reports for the month being reported.

All such records must be maintained for a period of three years following acceptance of final payment and will be available for inspection by the Department and the Federal Highway Administration.

Upon completion of subcontract work, the Contractor shall submit to the Department "DBE/WBE Contractor's Affidavit of Payment" - Form No. 932-13, indicating the type of work performed and the exact dollar amount paid for the work. Final payment to the Prime Contractor will be contingent upon receipt of all such affidavits by the Department.

4. SUBLETTING OF CONTRACTS - AFFIRMATIVE ACTION.

SUBARTICLE 8-1.1 (Pages 59 and 60). The following is added to this Subarticle:

Requirements in regard to affirmative action to maximize the utilization of DBE/WBE Firms as subcontractors or suppliers are set out in 4-7.

No request to sublet work will be approved unless it is in compliance with the Contractor's approved DBE/WBE Utilization Form No. 1 and DBE/WBE Affirmative Action Program Plan. Form No. 932-11 "Certification of Subcontract Amount to DBE/WBE Contractor" shall be completed and submitted with the Request For Authorization To Sublet Work. One copy of the certification will be attached to each copy of the Request For Authorization To Sublet Work.

The Contractor will not be allowed to perform work with its forces for items of work which are identified on the DBE/WBE Utilization Form No. 1 to be performed by DBE or WBE firms.

If a DBE/WBE subcontractor is unable to successfully perform the work, the Prime Contractor shall make a good faith effort to replace that firm with another DBE/WBE Subcontractor. The Contractor shall revise the DBE/WBE Utilization Form No. 1 and submit it to the Department for approval.

5. DETERMINATION OF DEFAULT.

SUBARTICLE 8-9.1 (Pages 69 and 70) is expanded as follows:

Failure to ensure that DBE/WBE Firms have the maximum opportunity to participate in performance of the contract as set out in 4-7, shall constitute failure to prosecute the work in an acceptable manner.

[illegible] 932-11
9-84

STATE OF FLORIDA
Florida Department of Transportation

Certification of Subcontract Amount to DBE/WBE Contractor

WPI Number ____________ Subcontractor's Name ____________

Project Number ____________ Address ____________

FAP Number ____________ ____________

County ____________ Telephone No. (   ) ____________

We, the undersigned, hereby certify that we have executed the following contract for the above numbered project. A copy of the agreement is attached.

The agreement is between ____________ (Prime Contractor) and

____________ (DBE/WBE) for the contract amount below.

Type of Work	Subcontract Amount	Estimated Completion date of the subcontract work

____
Signature of Prime Contractor

Sworn and subscribed before me this

____________ day of ____________ 19____

____
Notary Public State of Florida

____
Commission Expires

____
Signature of DBE/WBE (Owner)

Sworn and subscribed before me the

____________ day of ____________ 19____

____
Notary Public State of Florida

____
Commission Expires

A copy of this certification shall accompany each copy of the Request For Authorization to Sublet Work.

DISADVANTAGED/WOMEN BUSINESS ENTERPRISE
UTILIZATION AFFIRMATIVE ACTION CERTIFICATION

The Utilization Affirmative Action Certification, Form #932-10, certifies that the firm has an approved DBE/WBE Affirmative Action Plan on file with the Department or is attaching the plan with the Bid Document.

Form 932-10 further certifies that the firm, if considered the apparent low bidder, will show how the Disadvantaged/Women Business Goals for the projects(s) will be met.

ROUTING

FROM: The Prime Contractor

TO:

Orig. → With Bid

1 copy → *Bureau of Minority Programs

1 copy → *Regional Civil Rights Specialist

*Contracts Office sends copy to the Bureau of Minority Programs and the Bureau forwards to Regional Civil Rights Specialist.

FORM 922-13
3/84

STATE OF FLORIDA
DEPARTMENT OF TRANSPORTATION
DBE/WBE Contractors Affidavit of Payment

WPI Number ______________________ DBE/WBE Contractor ______________________

Project Number ______________________ Address ______________________

FAP Number ______________________ ______________________

County ______________________ Designation (DBE or WBE) ______________________

Prime Contractor ____

I, the undersigned DBE/WBE owner, execute this affidavit to certify that the actual subcontract amount received from the above Prime Contractor for this contract is $ ____________ involving work items ____________

____

____
DBE/WBE (Owner's) Signature

Sworn and subscribed before me this ____________ day of ____________ 19 ________

____
Notary Public

____
Commission Expires

NOTE: Final Payment to the Prime Contractor shall be contingent upon receipt by FDOT of all such affidavits.

Due: Immediately following receipt of final payment to the DBE/WBE from the Prime Contractor.

DISTRIBUTION: ORIG. - STATE ESTIMATES ENGINEER
1 COPY - PRIME CONTRACTOR
1 COPY - BUREAU OF MINORITY PROGRAMS
1 COPY - RESIDENT ENGINEER'S FILE

NOTICE OF RENTAL AGREEMENT

Where rentals of equipment on an operated basis, from the same lessor, exceed $10,000, such lessor will be subject to any Equal Employment Opportunity requirements which may be applicable to the project.

If an equipment rental, with or without an operator, is going to be used by the Contractor as a part of their DBE/WBE percentage to count toward their goal, the Notice of Rental Agreement should be submitted to the Resident Engineer's office. The Utilization Form #1, Certification of Subcontract Amount to DBE/WBE Contractor and the DBE/WBE Utilization Affirmative Action Certification must be attached to the Notice of Rental Agreement form.

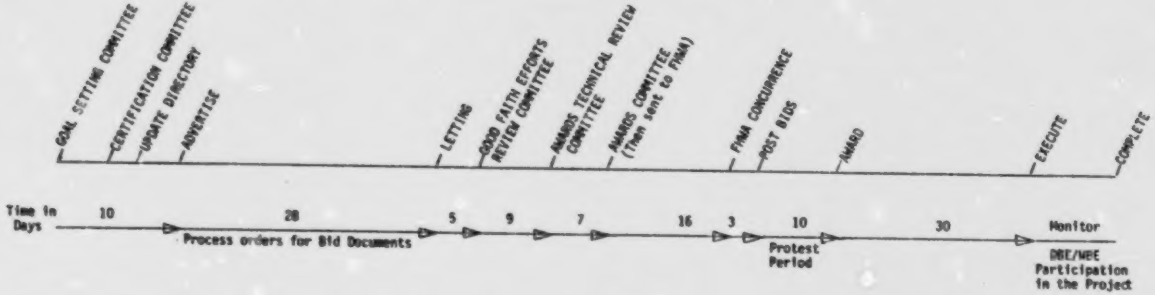
ROUTING

FROM: The Prime Contractor

TO: 3 copies Resident Engineer
- 1 copy → Bureau of Minority Programs
- 1 copy → Regional Civil Rights Specialist
- 1 copy → Resident Engineer's File

Plus Normal Distribution

CONTRACTING PROCESS TIMELINE


GOAL SETTING COMMITTEE
CERTIFICATION COMMITTEE
UPDATE DIRECTORY
ADVERTISE
LETTING
GOOD FAITH EFFORTS REVIEW COMMITTEE
AWARDS TECHNICAL REVIEW COMMITTEE
AWARDS COMMITTEE (Then sent to FHWA)
FHWA CONCURRENCE
POST BIDS
AWARD
EXECUTE
COMPLETE
Time in Days
10
28
Process orders for Bid Documents
5
9
7
16
3
10
Protest Period
30
Monitor
DBE/WBE Participation in the Project

FLORIDA DEPARTMENT OF TRANSPORTATION
FEDERAL AND STATE DBE/WBE PROGRAM ANALYSIS

(Date Prepared: 3/15/85)

INDEX TO TABLES AND CHARTS

GROUP "A"

1./ 8-YEAR HISTORICAL TREND OF FEDERAL CONTRACT AWARDS TO MINORITY BUSINESSES IN FDOT CONTRACTING

NOTE: For purposes of comparative analysis, contract awards for Federal Fiscal Years 82-83 and 83-84 to WBE's are consolidated with DBE awards on an annual basis, although, as of January 1983, we were required by the Federal Highway Administration to report them separately, along with the definitional change (from "MBE" to "DBE"), in addition to a distinction of "WBE's"). All subsequent analyses will be based on distinctions between "DBE's" and "WBE's.

a. Bar Chart of MBE/WBE & DBE/WBE Federal Contract Executions

b. Line Chart of MBE/WBE & DBE/WBE Federal Contract Executions

2./ LATEST 2-YEAR HISTORICAL TREND OF FEDERAL CONTRACT AWARDS (Based on Surface Transportation Assistance Act (of 1982) Change in definitions - including legislative mandate).

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(2) Summary Bar Chart of Comparative Dollar Amounts (to DBE's; and WBE's)

(3) Summary Line Chart of Comparative Dollar Amounts (to DBE's; and WBE's)

(4) Summary Bar Chart of Percentage of Federal Contracts (to DBE's and WBE's)

(5) Summary Line Chart of Percentage of Federal Contracts (to DBE's and WBE's)

b. Summary Numerial Table of Monthly and Yearly Achievements

(1) Line Chart of Monthly Federal Contracts Dollar Amounts Executed

(2) Line Chart of Cumulative Federal Contract Dollar Amounts Executed

(3) Line Chart of DBE Federal Contract Dollar Amounts, Executed Monthly

(4) Line Chart of Cumulative DBE Federal Contract Dollar Amounts Executed Monthly

(5) Line Chart of Cumulative DBE % Achievements

	GROUP "B" FEDERAL PROGRAM 82-83	GROUP "C" FEDERAL PROGRAM 83-84	GROUP "D" FEDERAL PROGRAM 84-85	GROUP "E" STATE PROGRAM 83-84	GROUP "F" STATE PROGRAM 84-85
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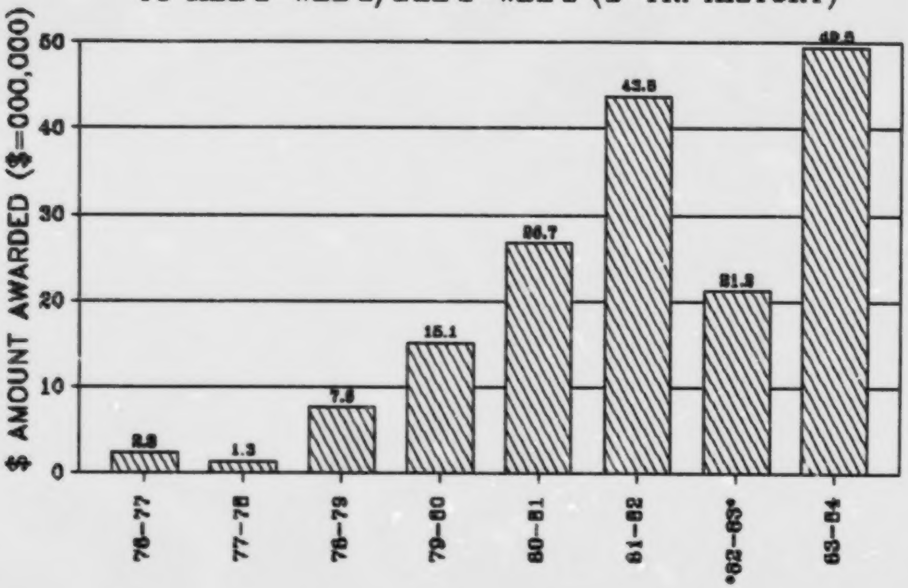
A 1. a.

FEDERAL CONTRACT AWARDS (FFY)

TO MBE'S-WBE'S/DBE'S-WBE'S (8-YR. HISTORY)



82-83 = DEFINITION CHANGE

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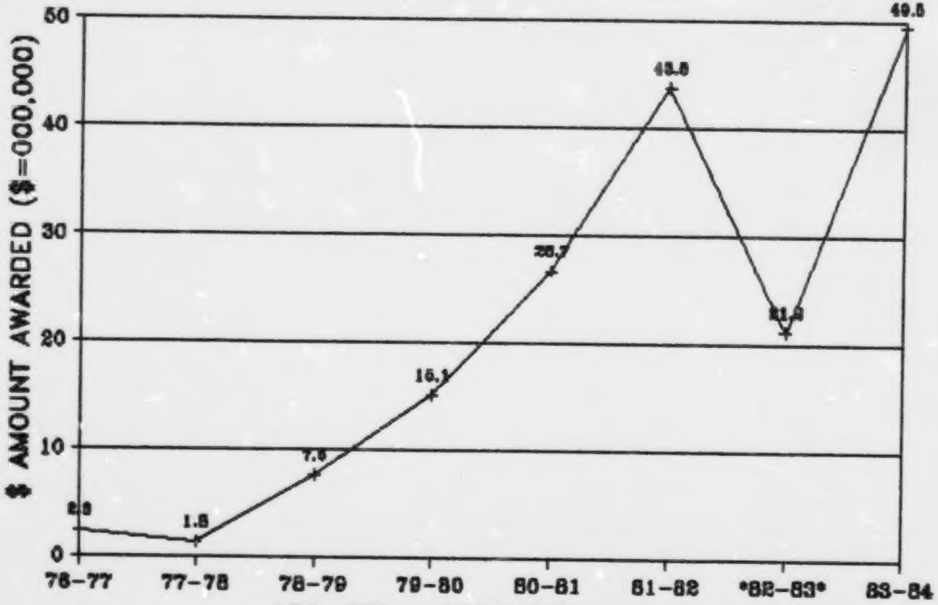
A 1. b.

FEDERAL CONTRACT AWARDS (FFY)

TO MBE'S–WBE'S/DBE'S–WBE'S (8–YR. HISTORY)



82–83 = DEFINITION CHANGE

A 2. a.

TWO AND A HALF YEAR HISTORY
FEDERAL CONTRACT AWARDS
TO DBE AND WBE FIRMS
(FFY-83 and FFY-84)
($ = MILLION)

DBE GOAL = AT LEAST 10%
WBE GOAL = 2%

	OCT 1 - SEP 20 1982 - 1983	OCT 1 - SEP 20 1983 - 1984	OCT 1 - FEB 20 1984 - 1985
CONTRACTS EXECUTED	$ 268.5	$ 270.2	$ 99.2
AMOUNT TO DBE'S	$ 15.8	$ 32.1	$ 9.6
AS A % OF TOTAL	5.9%	11.9%	9.7%
AMOUNT TO WBE'S	$ 5.4	$ 17.4	$ .3
AS A % OF TOTAL	2.0%	6.4%	.3%

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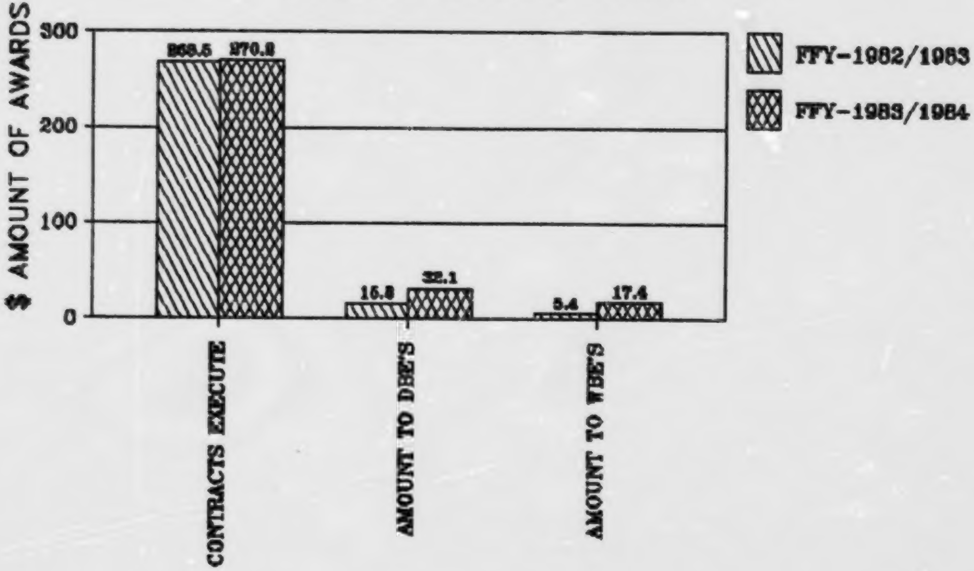
A 2. (1)

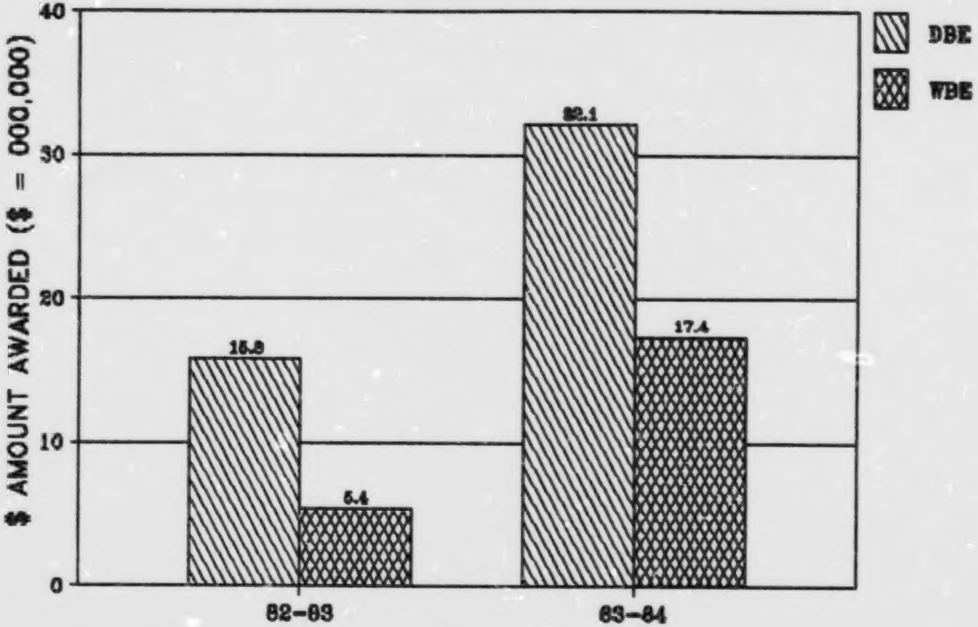
TWO YEAR HISTORY

FEDERAL CONTRACT AWARDS



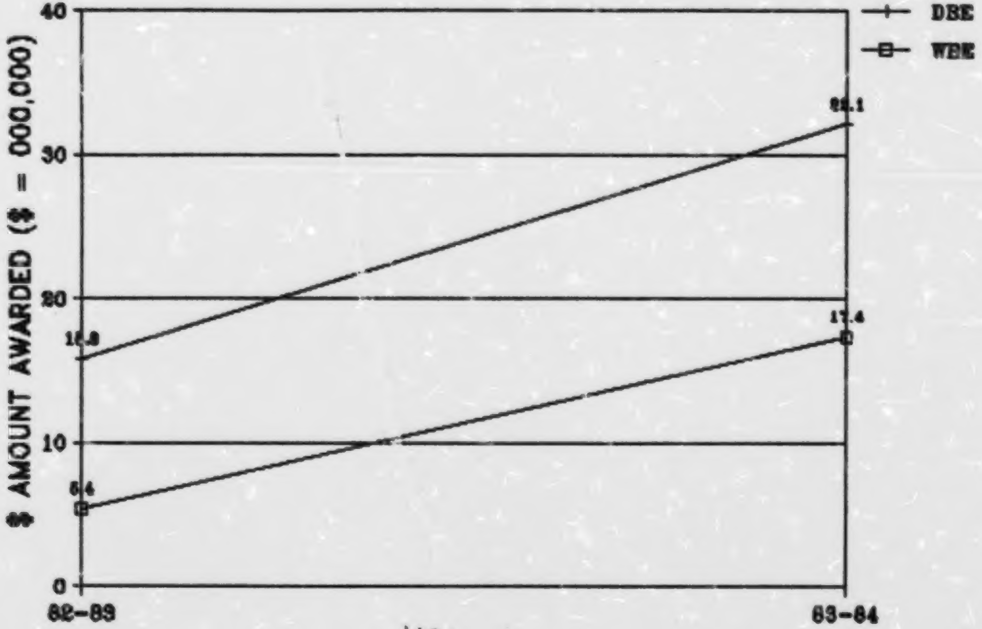
FEDERAL CONTRACT AWARDS (FFY)

TO DBE'S AND WBE'S (TWO-YEAR HISTORY)



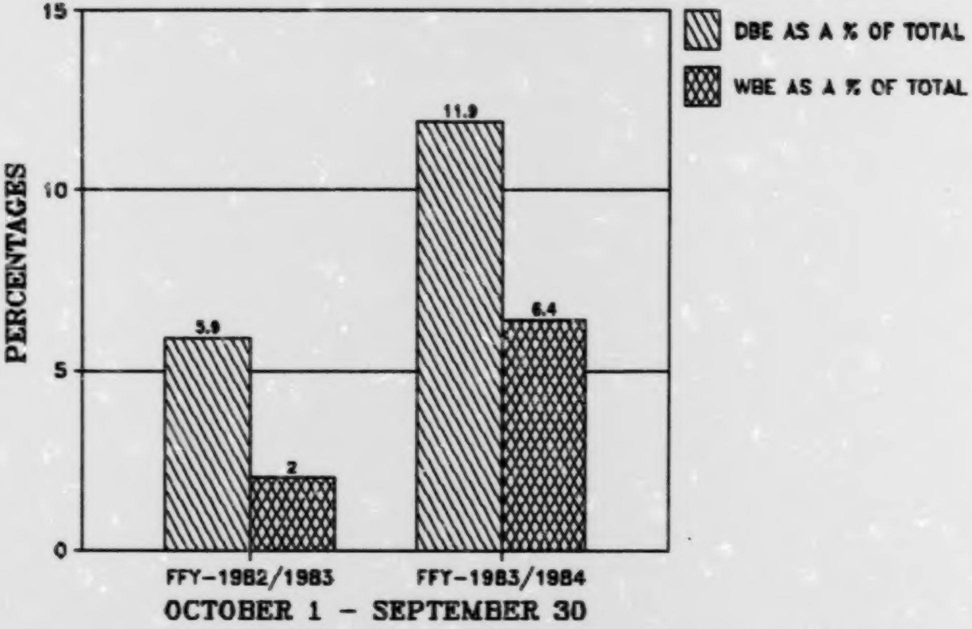
A 2. (3)

FEDERAL CONTRACT AWARDS (FFY)
TO DBE'S AND WBE'S (TWO-YEAR HISTORY)



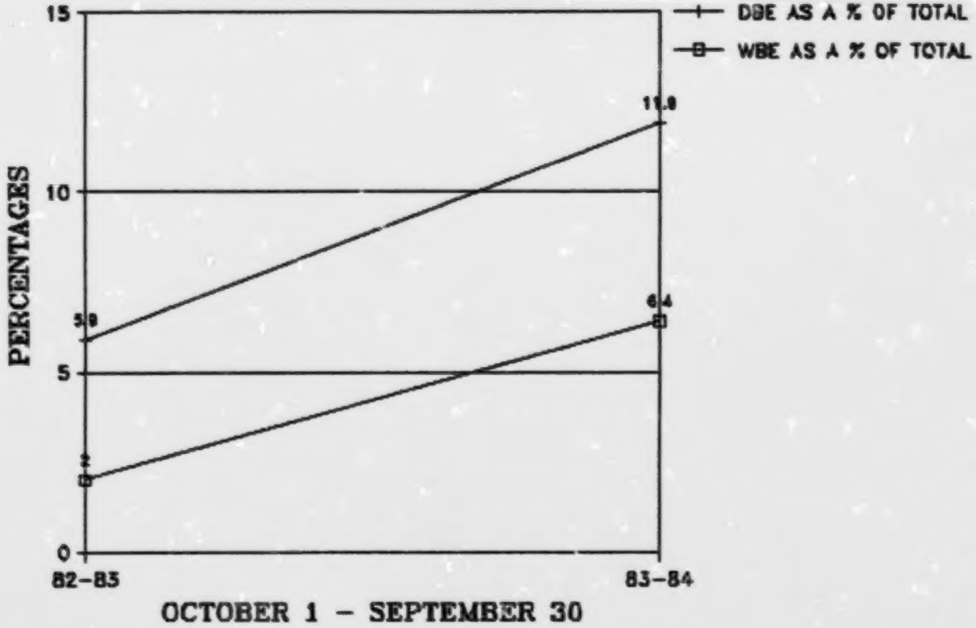
% OF FEDERAL CONTRACT EXECUTIONS

TO DBE'S AND WBE'S



% OF FEDERAL CONTRACT EXECUTIONS

TO DBE'S AND WBE'S



A 2. b.

TWO AND A HALF YEAR C'MPARISON
FEDERAL CONTRACTS EXECUTED MONTHLY
BY TOTAL; DBE; & WBE AMOUNTS
(October 1, 1982 - February 20, 1985

DBE GOAL = AT LEAST 10%
WBE GOAL = 2%

(As of 3/15/85)

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
CONTRACTS EXECUTED												
FFY-82/83	$ 3.4	$ 2.9	$ 12.9	$ 68.7	$ 15.9	$ 25.9	$ 2.9	$ 19.5	$ 57.2	$ 17.1	$ 23.7	$ 18.4
FFY-83/84	$ 3.1	$ 7.4	$ 10.5	$ 15.6	$ 30.1	$ 2.2	$ 9.1	$ 19.5	$ 18.4	$ 18.0	$ 30.5	$105.8
FFY-84/85	$ 11.2	$ 5.8	$ 6.5	$ 38.3	$ 37.4							
CUMULATIVE CONTRACTS EXECUTED												
FFY-82/83	$ 3.4	$ 6.3	$ 19.2	$ 87.9	$103.8	$129.7	$132.6	$152.1	$209.3	$226.4	$250.1	$268.5
FFY-83/84	$ 3.1	$ 10.5	$ 21.0	$ 36.6	$ 66.7	$ 68.9	$ 78.0	$ 97.5	$115.9	$133.9	$164.4	$270.2
FFY-84/85	$ 11.2	$ 17.0	$ 23.5	$ 61.8	$ 99.2							
AMT.TO DBE'S												
FFY-82/83	$ .01	$ .09	$ .5	$ .9	$ .2	$ 1.0	$ .1	$ 2.0	$ 6.0	$ 1.7	$ 2.1	$ 1.2
FFY-83/84	$ .05	$ .55	$ 1.0	$ .8	$ 3.8	$ .2	$ 1.3	$ 2.3	$ 2.9	$ 1.6	$ 5.8	$ 11.8
FFY-84/85	$ 1.3	$ .5	$ .6	$ 4.6	$ 2.6							
CUMULATIVE AMT.TO DBE'S												
FFY-82/83	$ .01	$ .1	$ .6	$ 1.5	$ 1.7	$ 2.7	$ 2.8	$ 4.8	$ 10.8	$ 12.5	$ 14.6	$ 15.8
FFY-83/84	$ .05	$ .6	$ 1.6	$ 2.4	$ 6.2	$ 6.4	$ 7.7	$ 10.0	$ 12.9	$ 14.5	$ 20.3	$ 32.[illegible]
FFY-84/85	$ 1.3	$ 1.8	$ 2.4	$ 7.0	$ 9.6							
DBE AS A % OF TOTAL CONTRACTS EXECUTED 1/												
FFY-82/83	.3%	1.6%	3.1%	1.7%	1.7%	2.1%	2.1%	3.2%	5.2%	5.5%	5.8%	5.9%
FFY-83/84	1.6%	5.7%	7.6%	6.6%	9.3%	9.3%	9.9%	10.2%	11.1%	10.8%	12.4%	11.9%
FFY-84/85	11.6%	10.6%	10.2%	11.3%	9.7%							
AMT.TO WBE'S	2/											
FFY-82/83												$ 5.4
FFY-83/84	$ .15	$ 2.75	$ .2	$ .1	$ 12.4	$ -0-	$ .4	$ .3	$ .3	$ -0-	$ .1	$ .7
FFY-84/85	$ -0-	$ .01	$ -0-	$ .09	$ .2							
CUMULATIVE AMT.TO WBE'S												
FFY-82/83												$ 5.4
FFY-83/84	$ .15	$ 2.9	$ 3.1	$ 3.2	$ 15.6	$ 15.6	$ 16.0	$ 16.3	$ 16.6	$ 16.6	$ 16.7	$ 17.4
FFY-84/85	$ -0-	$ .01	$ .01	$ .1	$ .3							
WBE'S AS A % OF TOTAL												
FFY-82/83												2.0%
FFY-83/84	4.8%	27.6 %	14.8 %	8.7%	23.4%	22.6%	20.5%	16.7%	14.3%	12.4%	10.2%	6.4%
FFY-84/85	-0-	.06%	.04%	.2%	.3%							

NOTES: 1/ The low percentage of DBE participation for FFY-82/83 results from two major considertations: (a) While the law was signed 1/6/83, it was retroactive & prorated to 10/1/82, during which time the Dept. "let" the largest contract ever - "**SKYWAY BRIDGE**"; and (b) federal recognition that the first year represented a transition period from "MBE" to "DBE".

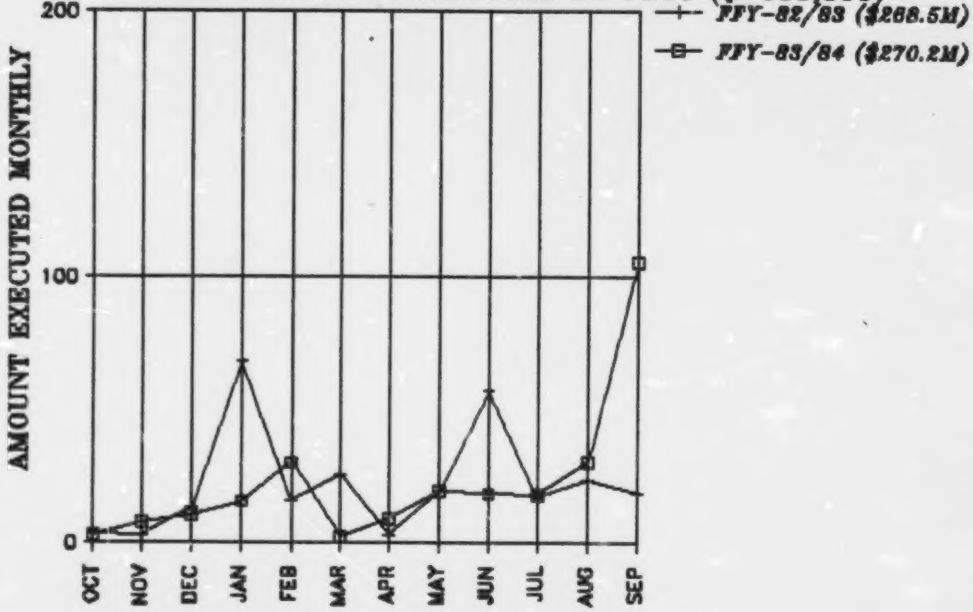
NOTES: (Continued)

2/ Because of the definitional distinction and separation of "WBE's (since, as a group, they do not qualify under "socially and economically disadvantaged" criteria), and since there was **no legislative goal mandated**, we did not keep WBE reporting on a monthly basis, although we did accumulate a consolidated annual WBE level of achievement in contract participation.

A b. (1)

2–YEAR HISTORIC TREND LINE

FEDERAL CONTRACTS EXECUTED BY FDOT ($=000,000)



(OCTOBER 1, 1982 – SEPTEMBER 30, 1984)

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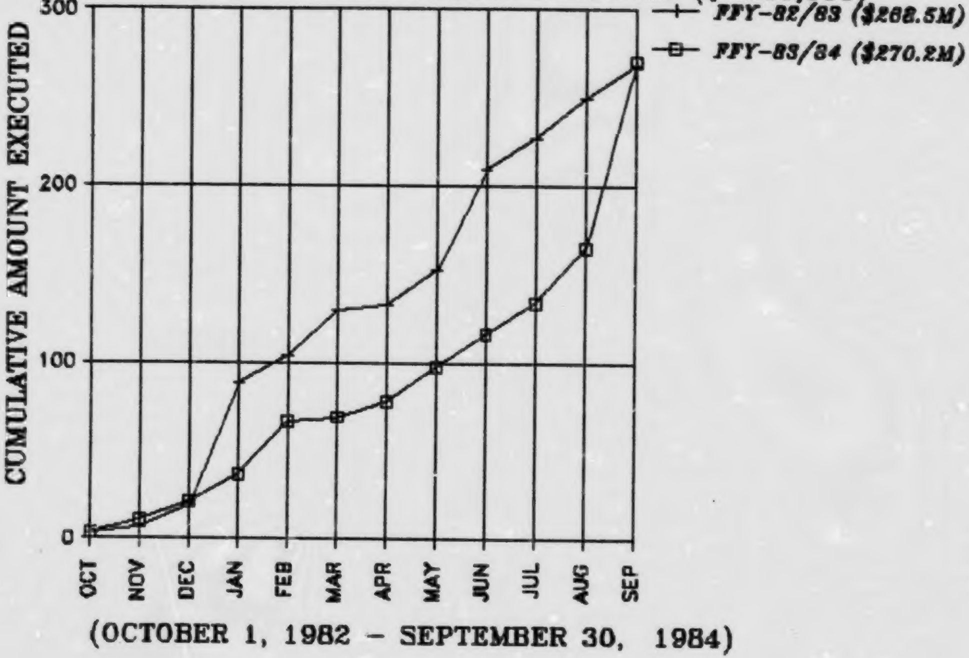
A b. (2)

2-YEAR HISTORIC TREND LINE

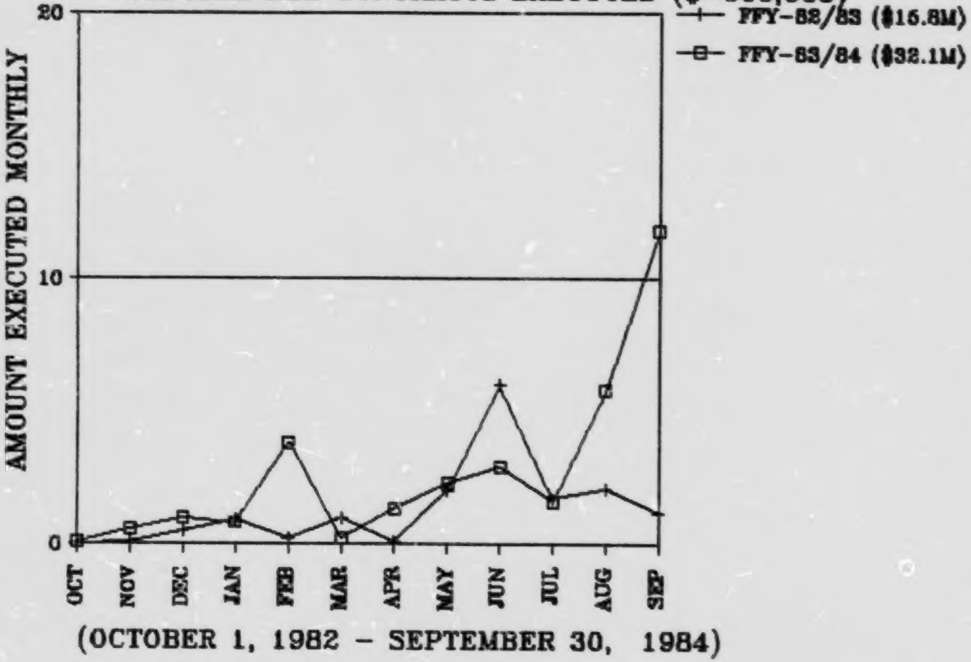
CUM. FDOT FED. CONTRACTS EXECUTED ($=000,000)



A b. (3)

2-YEAR HISTORIC TREND LINE

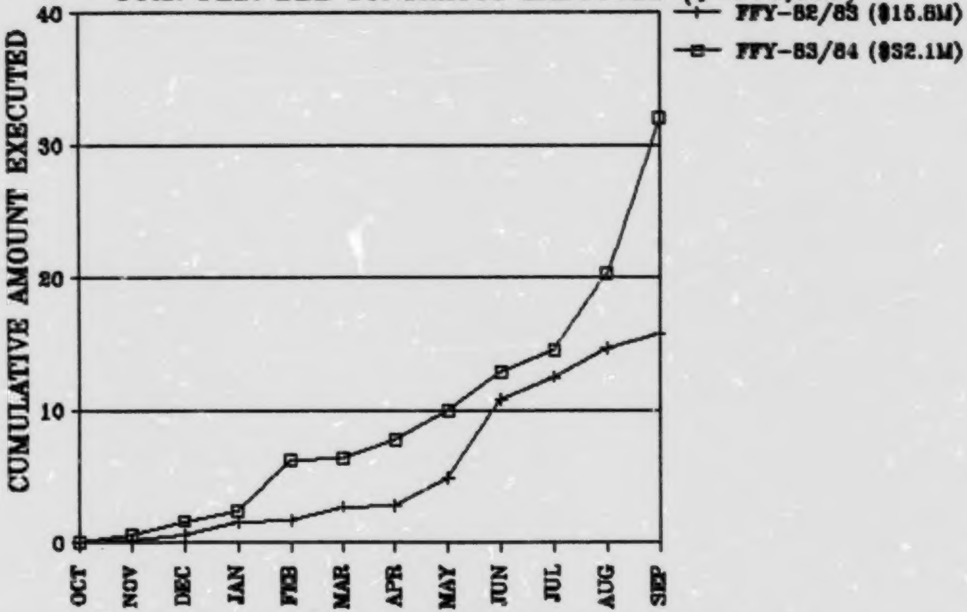
FEDERAL DBE CONTRACTS EXECUTED ($=000,000)



A b. (4)

2-YEAR HISTORIC TREND LINE

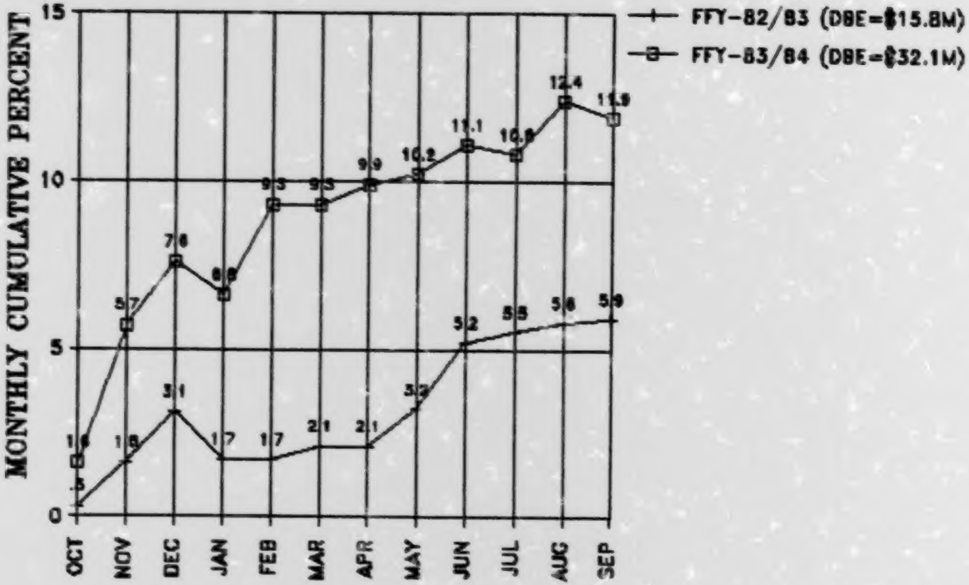
CUM. FED. DBE CONTRACTS EXECUTED ($=000,000)



(OCTOBER 1, 1982 - SEPTEMBER 30, 1984)

2–YEAR HISTORIC TREND LINE

% OF DBE PARTICIPATION IN FEDERAL CONTRACTS ($=000,000)



(OCTOBER 1, 1982 – SEPTEMBER 20, 1984)

B-1

FEDERAL CONTRACTS EXECUTED MONTHLY
BY TOTAL; DBE; & WBE AMOUNTS
(October 1, 1982 - September 30, 1983

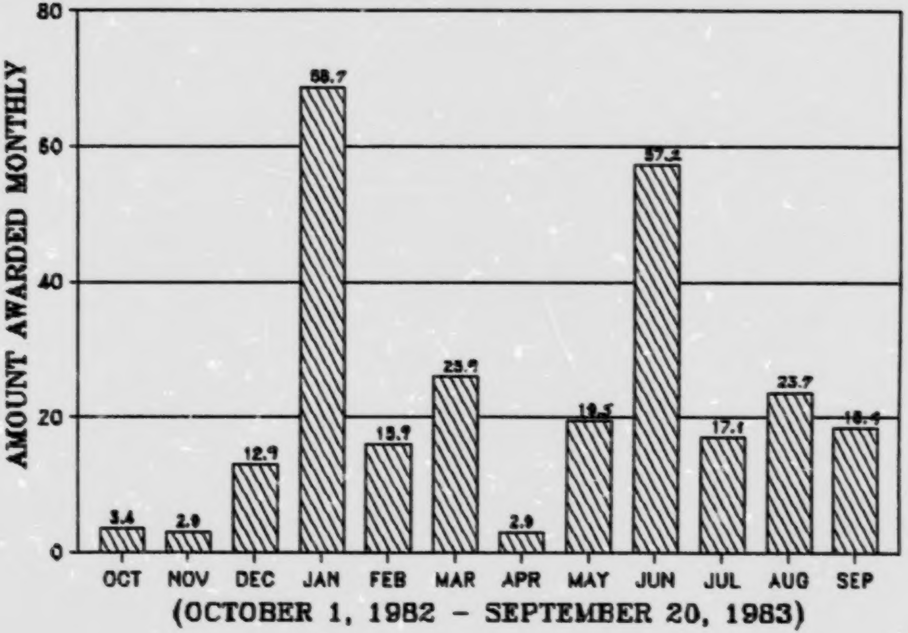
DBE GOAL — AT LEAST 10%
WBE GOAL = 2%

(As of 3/5/85)

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
CONTRACTS EXECUTED	$ 3.4	$ 2.9	$ 12.9	$ 68.7	$ 15.9	$ 25.9	$ 2.9	$ 19.5	$ 57.2	$ 17.1	$ 23.7	$ 18.4
CUMULATIVE	$ 3.4	$ 6.3	$ 19.2	$ 87.9	$103.8	$129.7	$132.6	$152.1	$209.3	$226.4	$250.1	$268.5
AMOUNT TO DBE'S	$ .01	$ .09	$ .5	$ .9	$ .2	$ 1.0	$ .1	$ 2.0	$ 6.0	$ 1.7	$ 2.1	$ 1.2
CUMULATIVE	$ .01	$ .1	$ .6	$ 1.5	$ 1.7	$ 2.7	$ 2.8	$ 4.8	$ 10.8	$ 12.5	$ 14.6	$ 15.8
AS A % OF TOTAL:	.3%	1.6%	3.1%	1.7%	1.6%	2.1%	2.1%	3.2%	5.2%	5.5%	5.8%	5.9%
AMOUNT TO WBE'S	$	$	$	$	$	$	$	$	$	$	$	$
CUMULATIVE	$	$	$	$	$	$	$	$	$	$	$	$ 5.4
AS A % OF TOTAL:	%	%	%	%	%	%	%	%	%	%	%	2.0%

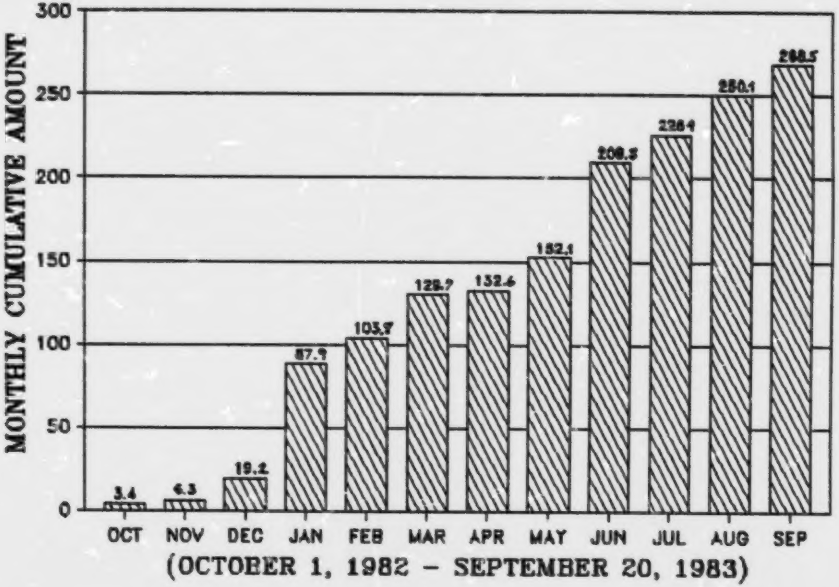
FEDERAL PROGRAM ($268.5M)

AMOUNT AWARDED MONTHLY



CUMULATIVE FEDERAL CONTRACTS EXECUT

MONTHLY CUMULATIVE AMOUNT



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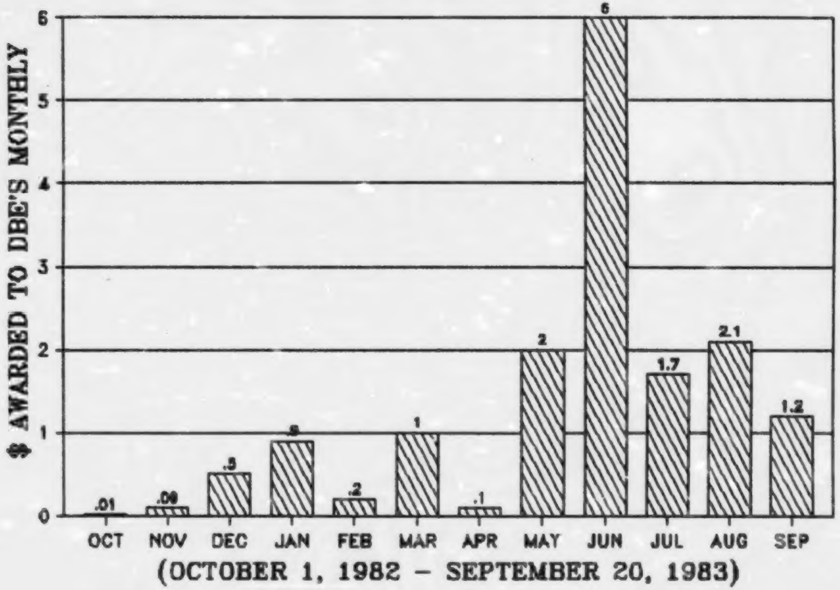
FEDERAL PROGRAM ($268.5M)

TOTAL AMOUNT AWARDED TO DBE'S = $15.8M (5.9%)



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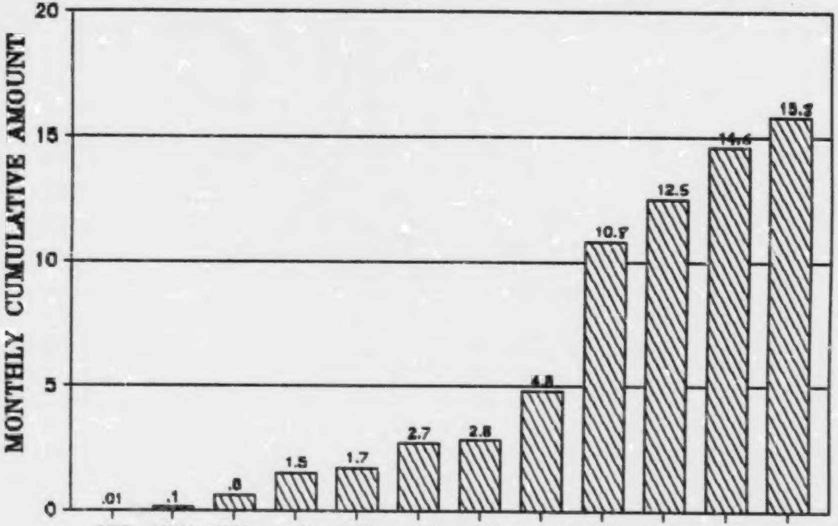
FEDERAL PROGRAM ($268.5M)

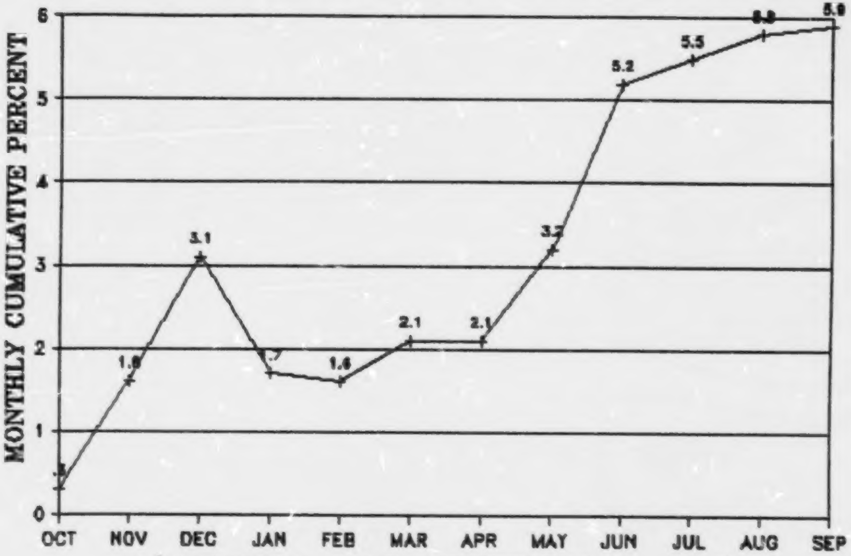
CUM. FED. DBE CONTRACTS EXECUTED ($=000,000)



(OCTOBER 1, 1982 - SEPTEMBER 20, 1983)

FEDERAL DBE CONTRACTS EXECUTED

CUMULATIVE % OF DOLLARS TO DBE'S ($15.8M/5.9% OF $268.5M)



(OCTOBER 1, 1982 - SEPTEMBER 20, 1983)

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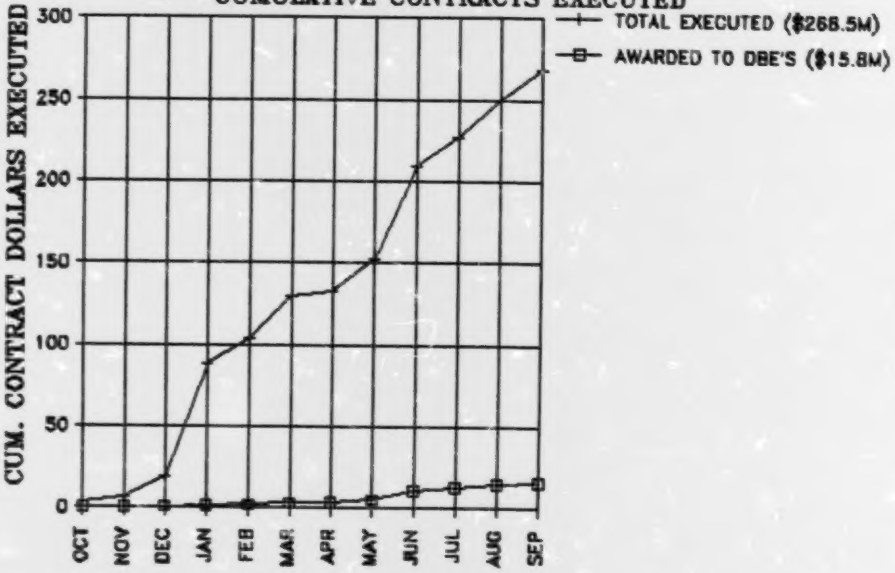
FEDERAL PROGRAM ($=000,000)

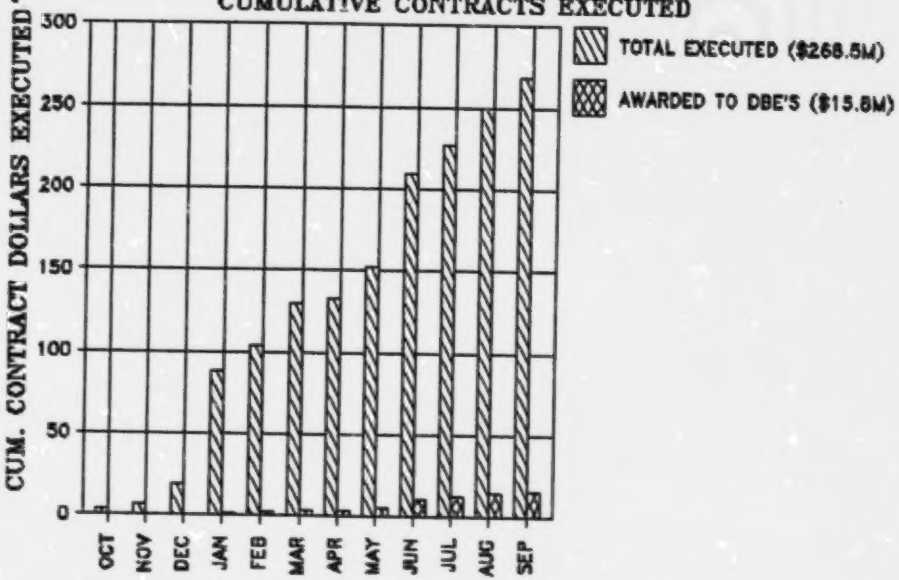
CUMULATIVE CONTRACTS EXECUTED



(OCTOBER 1, 1982 - SEPTEMBER 20, 1983)

FEDERAL PROGRAM ($=000,000)

CUMULATIVE CONTRACTS EXECUTED



(OCTOBER 1, 1982 - SEPTEMBER 20, 1983)

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FEDERAL CONTRACTS EXECUTED MONTHLY
BY TOTAL; DBE; & WBE AMOUNTS
(October 1, 1983 - September 20, 1984)

DBE GOAL = AT LEAST 10%
WBE GOAL = 2%

(As of 3/5/85)

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
CONTRACTS EXECUTED	$3.1	$ 7.4	$10.5	$15.6	$30.1	$ 2.2	$ 9.1	$19.5	$ 18.4	$ 18.0	$ 30.5	$105.8
CUMULATIVE		$10.5	$21.0	$36.6	$66.7	$68.9	$78.0	$97.5	$115.9	$133.9	$164.4	$270.2
AMOUNT TO DBE'S	$ .05	$ .55	$ 1.0	$ .8	$ 3.8	$ .2	$ 1.3	$ 2.3	$ 2.9	$ 1.6	$ 5.8	$ 11.8
CUMULATIVE		$ .6	$ 1.6	$ 2.4	$ 6.2	$ 6.4	$ 7.7	$10.0	$ 12.9	$ 14.5	$ 20.3	$ 32.1
AS A % OF TOTAL:	1.6%	5.7%	7.6%	6.6%	9.3%	9.3%	9.9%	10.2%	11.1%	10.8%	12.4%	11.9%
AMOUNT TO WBE'S	$ .15	$ 2.75	$ .2	$ .1	$12.4	$ -0-	$ .4	$ .3	$ .3	$ -0-	$ .1	$ .7
CUMULATIVE		$ 2.90	$ 3.1	$ 3.2	$15.6	$15.6	$16.0	$16.3	$ 16.6	$ 16.6	$ 16.7	$ 17.4
AS A % OF TOTAL:	4.8%	27.6%	14.8%	8.7%	23.4%	22.6%	20.5%	16.7%	14.3%	12.4%	10.2%	6.4%

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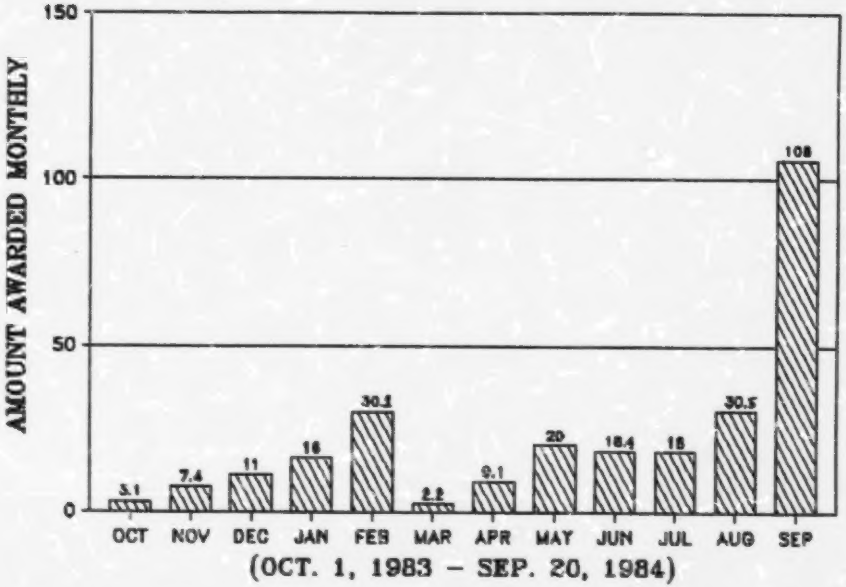
FEDERAL PROGRAM ($270.2M)

AMOUNT AWARDED MONTHLY



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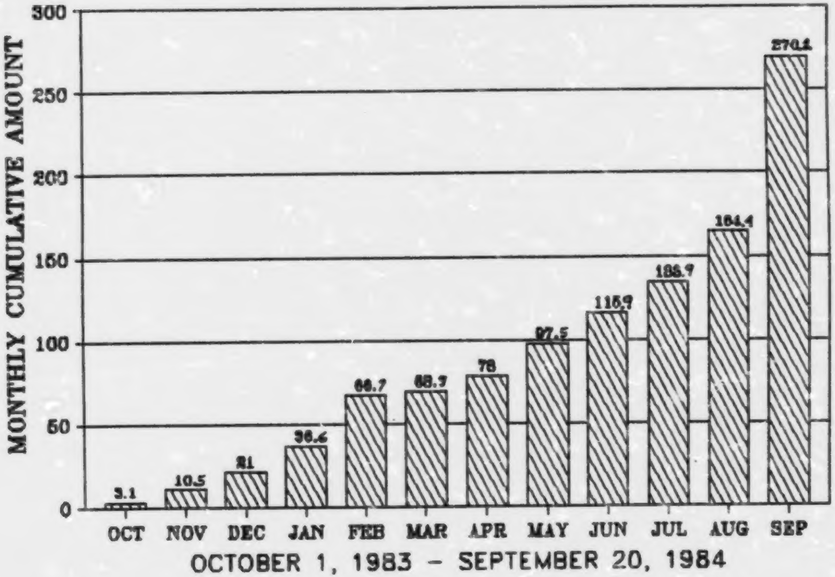
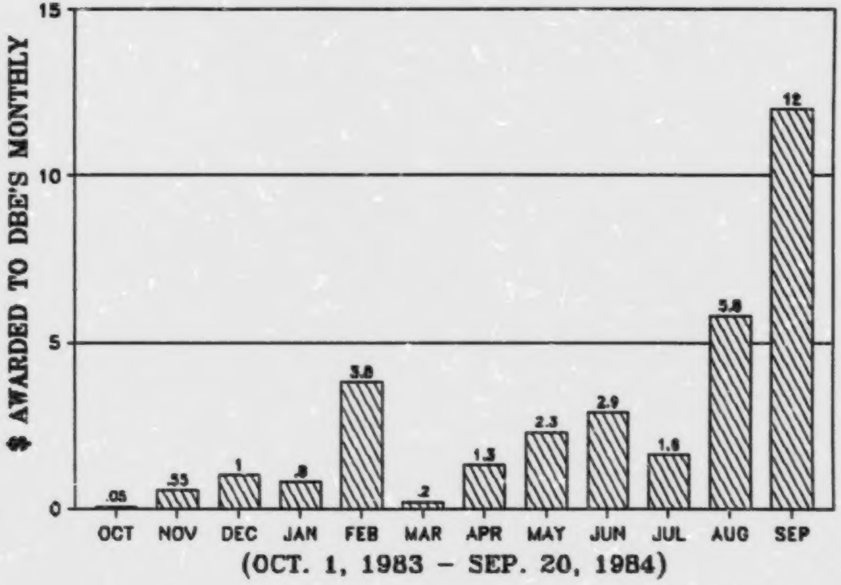
FED. CONTRACTS EXECUTED - FY/84

MONTHLY CUMULATIVE AMOUNT



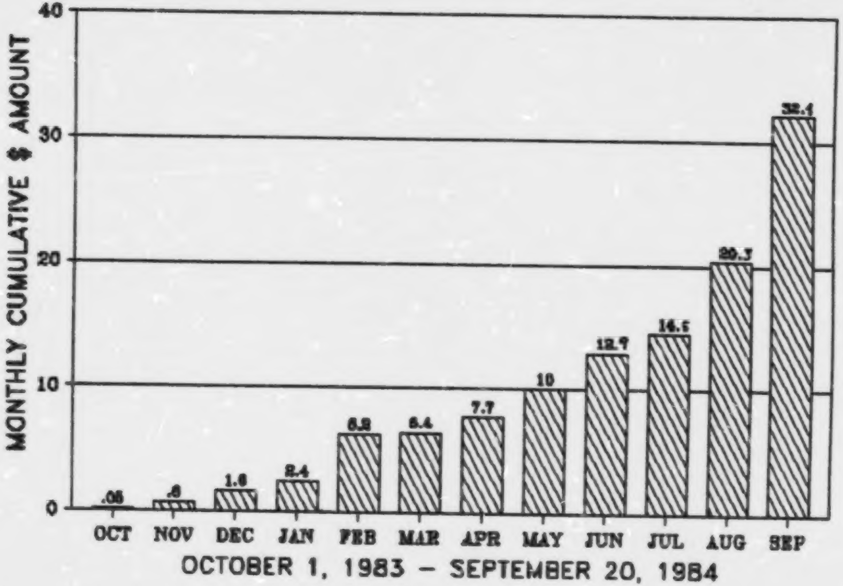
FEDERAL PROGRAM ($270.2M)

TOTAL AMOUNT AWARDED TO DBE'S = $32.1M (11.9%)



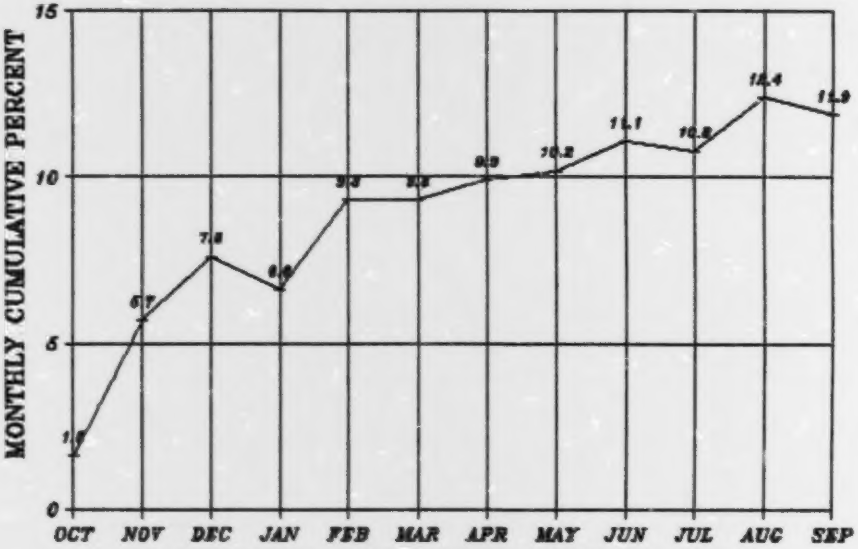
FED. CONTRACTS EXECUTED - FY/84

CUMULATIVE DOLLAR AMOUNT AWARDED TO DBE'S



FED. CONTRACTS EXECUTED - FY/84

CUMULATIVE % OF DOLLARS TO DBE'S ($32.1M/11.9% OF $270.2M)



OCTOBER 1, 1983 - SEPTEMBER 20, 1984

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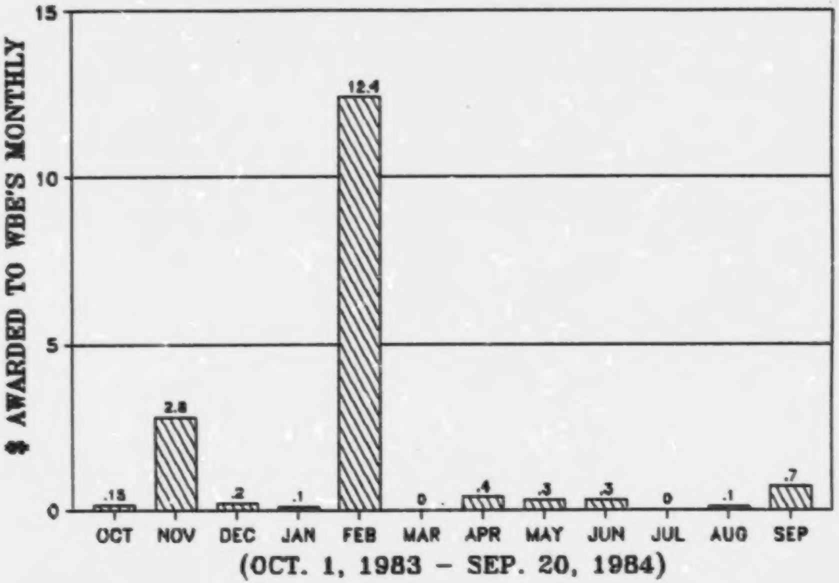
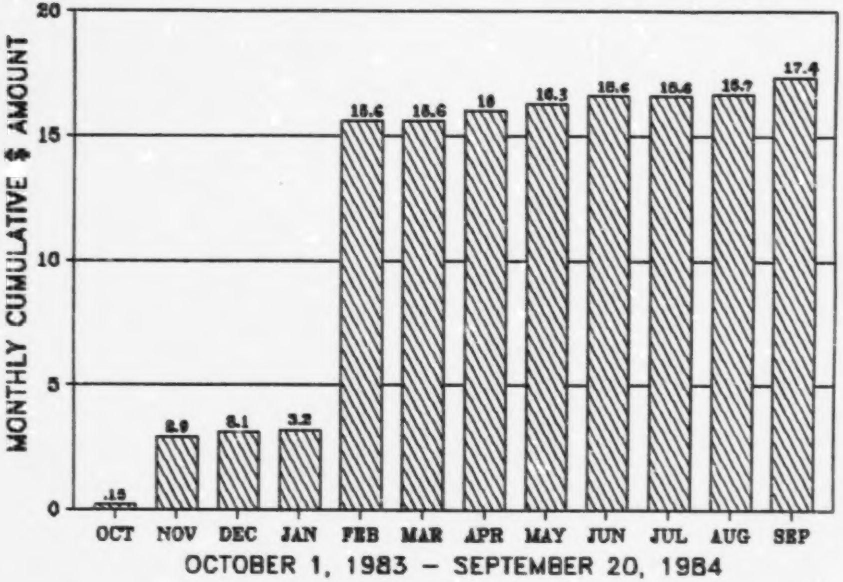
FEDERAL PROGRAM ($270.2M)

TOTAL AMOUNT AWARDED TO WBE'S = $17.4M (6.4%)



FED. CONTRACTS EXECUTED - FY/84

CUMULATIVE DOLLAR AMOUNT AWARDED TO WBE'S



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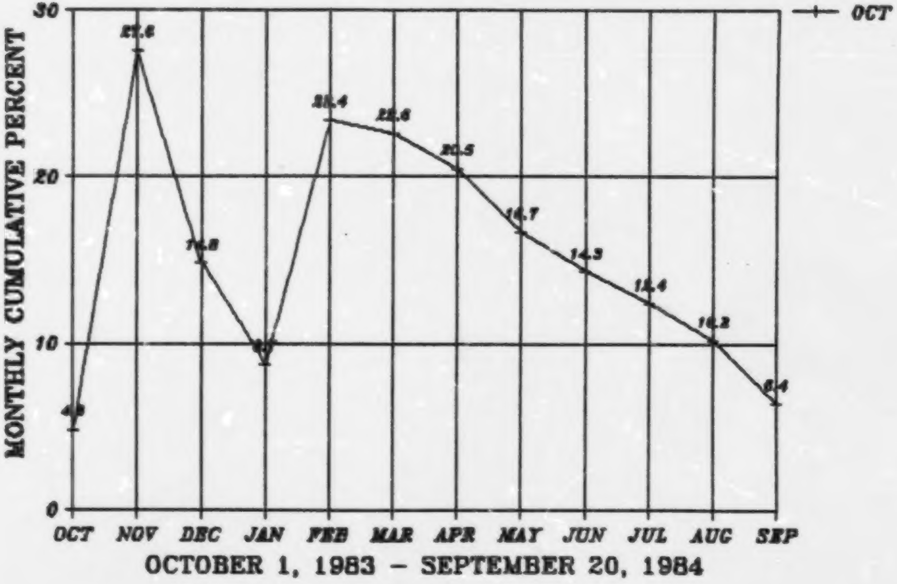
FED. CONTRACTS EXECUTED - FY/84

CUMULATIVE % OF DOLLARS TO WBE'S ($17.4M/6.4% OF $270.2M)



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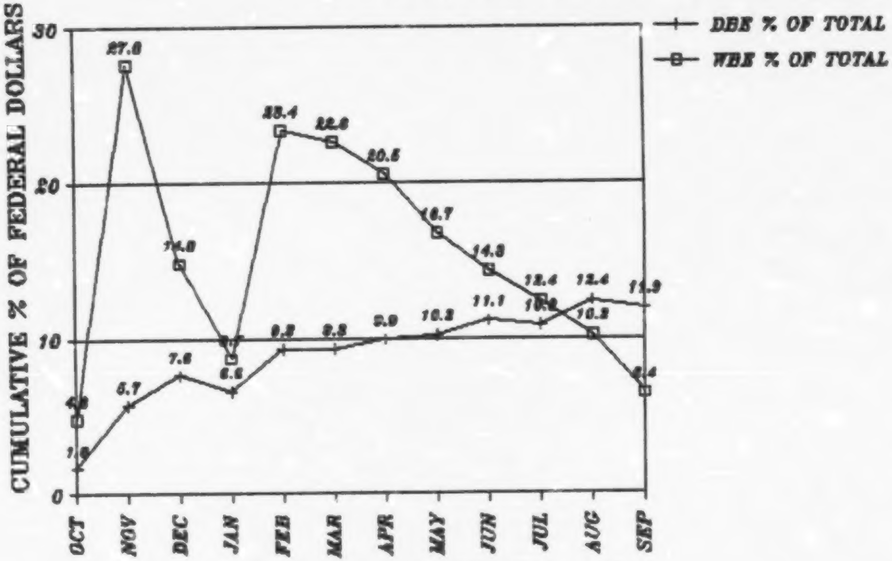
CUMULATIVE % OF FEDERAL DOLLARS

TO DBE'S AND WBE'S



OCTOBER 1, 1983 - SEPTEMBER 20, 1984

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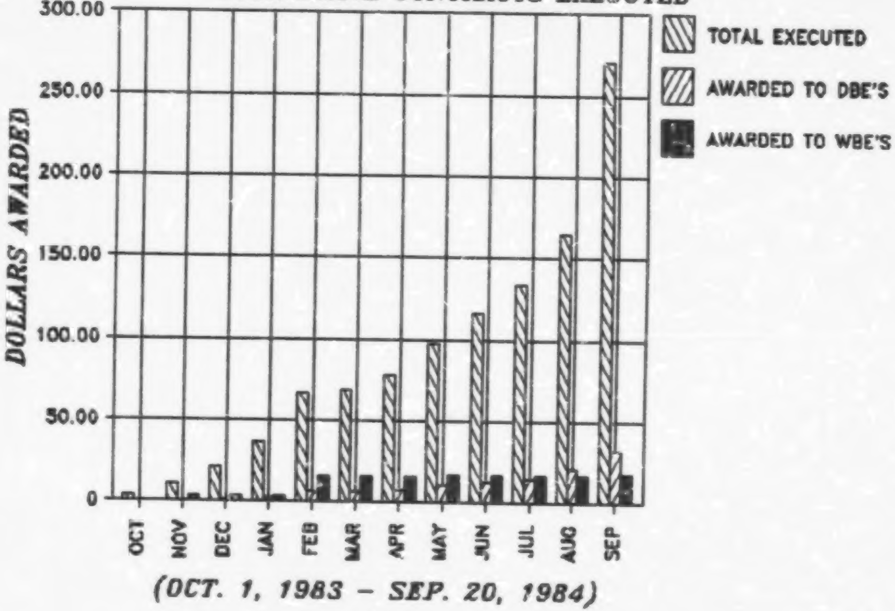
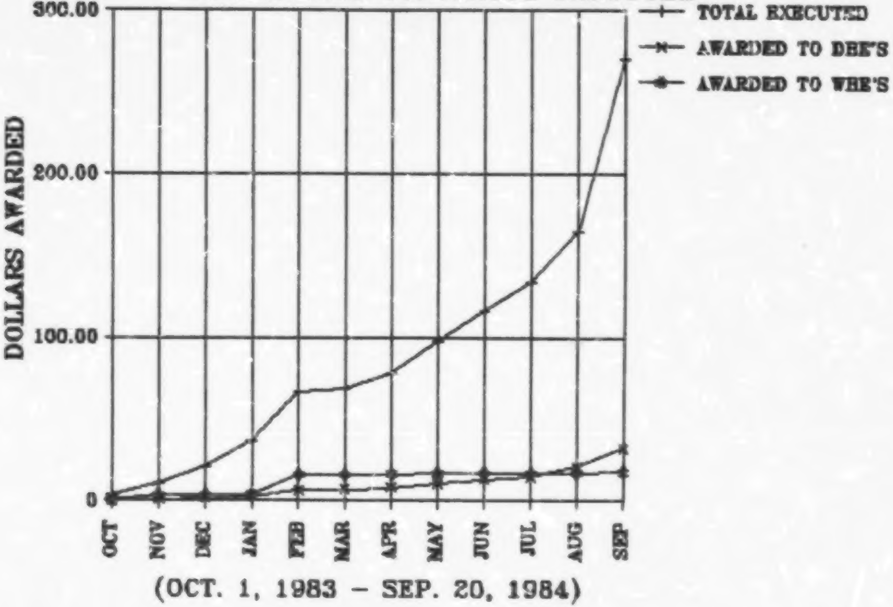
FEDERAL PROGRAM ($=000,000)

CUMULATIVE CONTRACTS EXECUTED



FEDERAL PROGRAM ($=000,000)

CUMULATIVE CONTRACTS EXECUTED



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FLORIDA DEPARTMENT OF TRANSPORTATION

Contracts and Subcontracts
Awarded to DBE's
(October 1, 1983 - September 30, 1984)

FEDERAL PROGRAM

(AS OF 3/4/85)

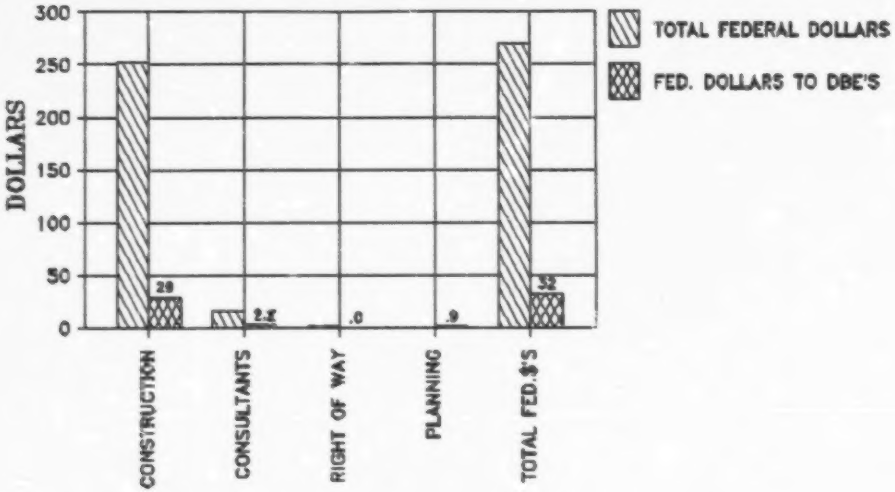
	CONSTRUCTION	CONSULTANTS	RIGHT OFWAY	PLANNING	TOTAL FEDERAL DOLLARS AWARDED
TOTAL FEDERAL DOLLARS AWARDED	$252,385,639	$16,050,747	$1,390,066	$387,738	$270,214,190
TOTAL FEDERAL DOLLARS AWARDED TO DBE'S	$ 29,164,460	$ 2,816,531	$ 15,834	$ 91,267	$ 32,088,092
PERCENT OF FEDERAL DOLLARS AWARDED TO DBE'S	11.56%	17.55%	1.14%	23.54%	11.88%
PERCENT OF TOTAL FEDERAL DOLLARS AWARDED	93.40%	5.94%	.51%	.14%	100%

BREAKOUT OF
FEDERAL CONSTRUCTION CONTRACTS
(Representing 93.40% of all Federal Funds Awarded)
(BY DBE TYPE)

MINORITY GROUP	NUMBER OF CONTRACTS	TOTAL DOLLARS AWARDED TO DBE'S	% OF TOTAL DBE DOLLARS	% OF TOTAL FEDERAL DOLLARS
ASIAN	2	$ 158,400	.54%	.06%
BLACK	152	$ 8,519,372	29.21%	3.15%
HISPANIC	65	$16,315,310	55.94%	6.04%
INDIAN	71	$ 4,171,378	14.31%	1.54%
TOTALS:	290	$29,164,460	100.00%	10.79%

FEDERAL PROGRAM ($=000,000)

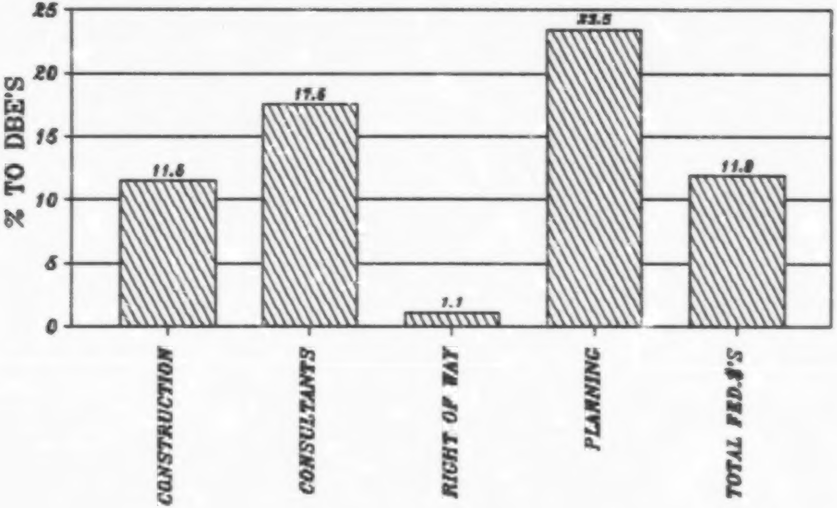
BY TYPES OF CONTRACTS AWARDED



(OCTOBER 1, 1983 - SEPTEMBER 20, 1984)

% OF FEDERAL DOLLARS TO DBE'S

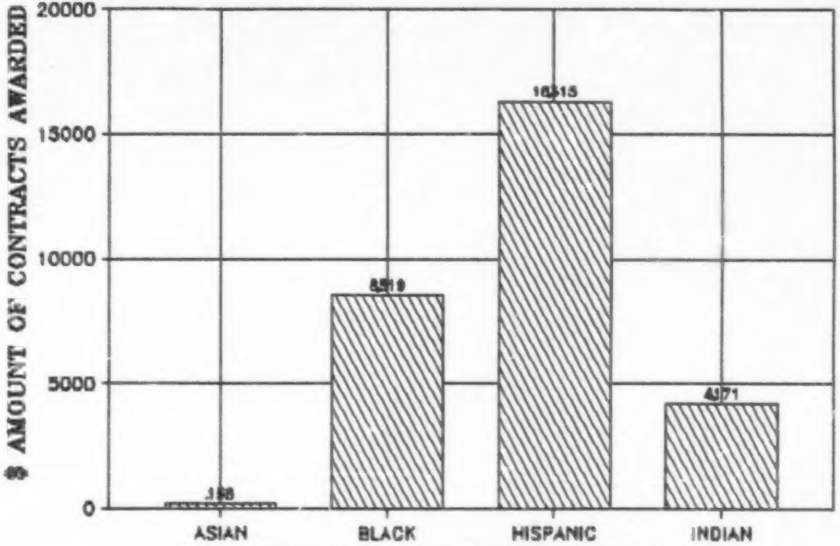
BY TYPES OF CONTRACTS AWARDED



(OCTOBER 1, 1983 - SEPTEMBER 20, 1984)

FED. CONSTRUCTION CONTRACTS ($=000)

(REPRESENTING 93.4% OF FEDERAL FUNDS AWARDED)



(OCTOBER 1, 1983 - SEPTEMBER 20, 1984)

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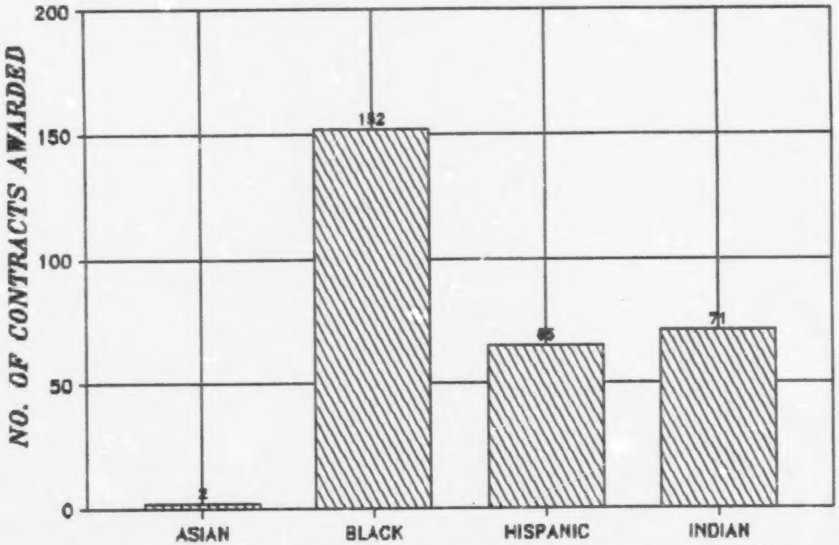
FEDERAL CONSTRUCTION CONTRACTS

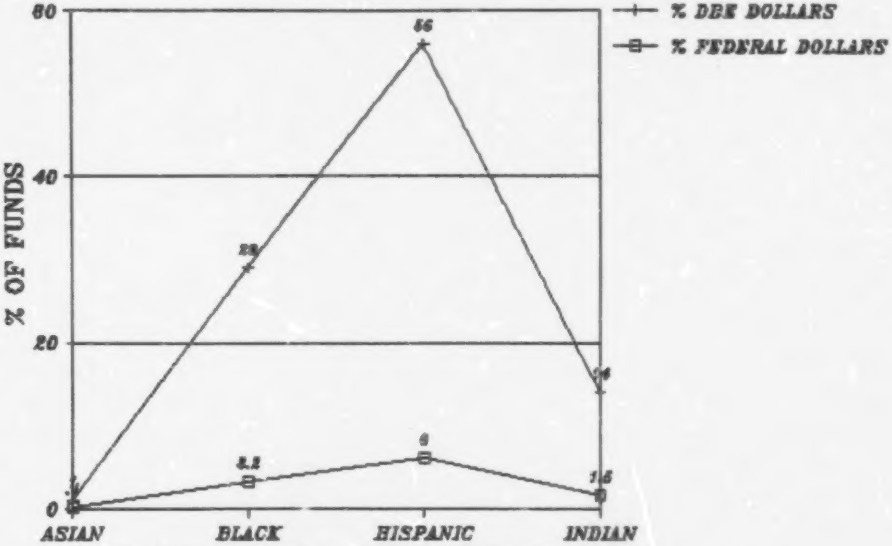
REPRESENTING 93.4% OF ALL FEDERAL FUNDS AWARDED



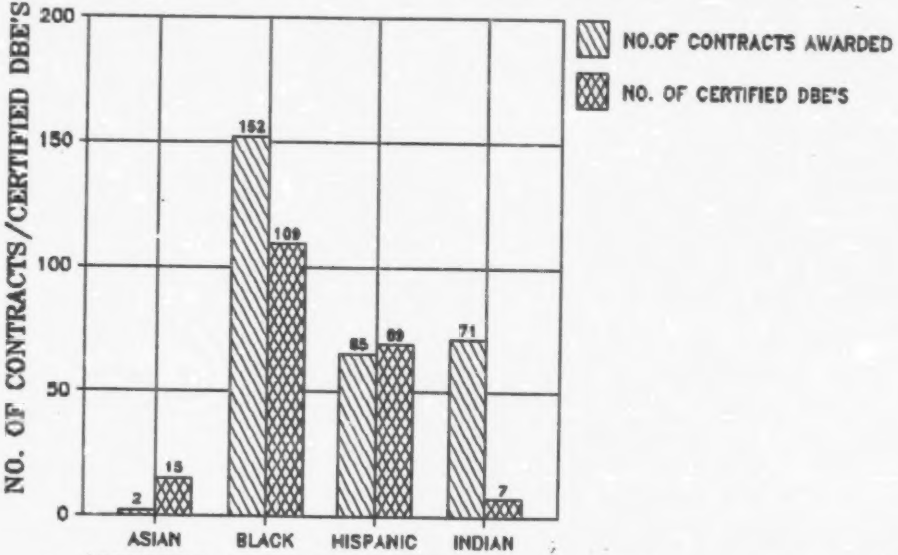
(OCTOBER 1, 1983 - SEPTEMBER 20, 1984)

FED.CONSTR.CONTRACTS ($252,385,639)

% OF FUNDS



(OCTOBER 1, 1983 - SEPTEMBER 20, 1984)



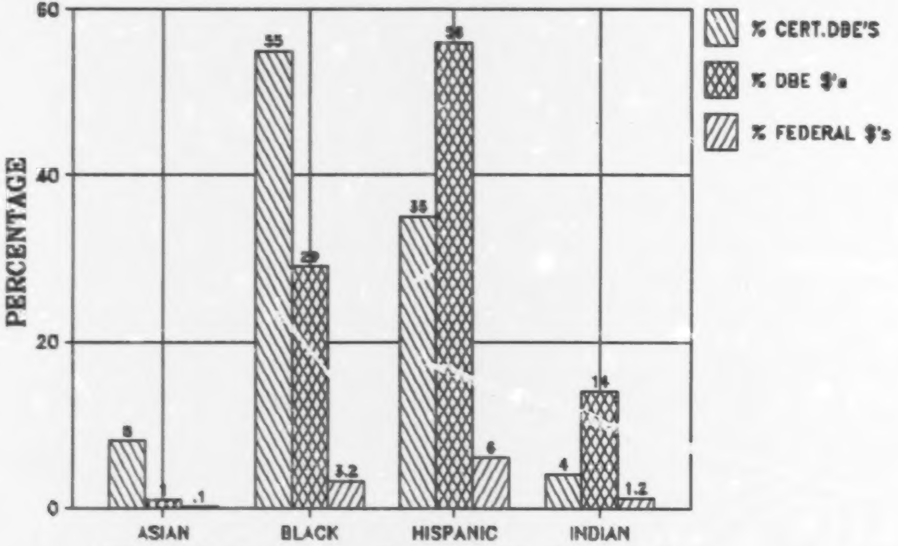
FED. CONSTRUCTION CONTRACTS

(REPRESENTING 93.4% OF FEDERAL FUNDS AWARDED)

(OCTOBER 1, 1983 – SEPTEMBER 20, 1984)

FED.CONSTR.CONTRACTS ($252,385,639)

(93.4% OF ALL FED. FUNDS AWARDED)



(OCTOBER 1, 1983 - SEPTEMBER 20, 1984)

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FEDERAL CONTRACTS EXECUTED MONTHLY
BY TOTAL; DBE; & WBE AMOUNTS
(October 1, 1984 - February 20, 1985

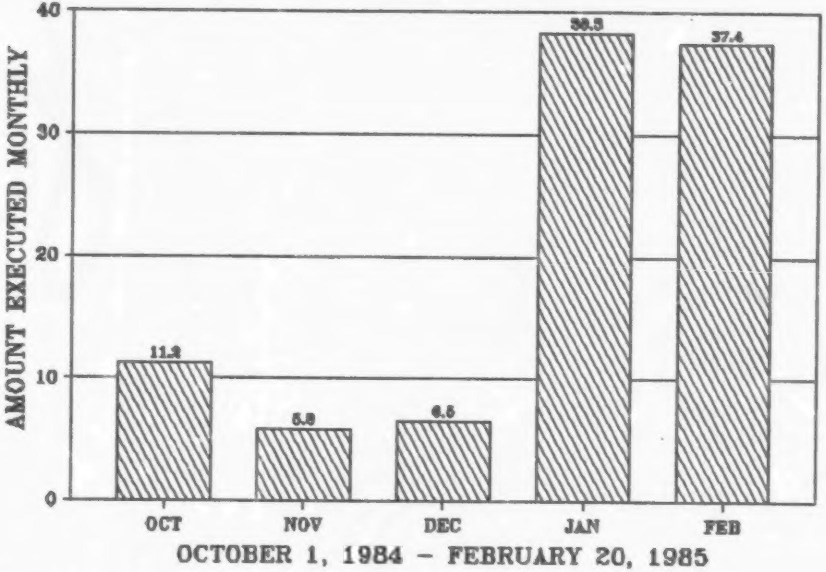
DBE GOAL = AT LEAST 10%
WBE GOAL = 2%

(As of 3/5/85)

	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
CONTRACTS EXECUTED	$ 11.2	$ 5.8	$ 6.5	$38.3	$37.4							
CUMULATIVE	$ 11.2	$ 17.0	$23.5	$61.8	$99.2							
AMOUNT TO DBE'S	$ 1.3	$ .5	$ .6	$ 4.6	$ 2.6							
CUMULATIVE	$ 1.3	$ 1.8	$ 2.4	$ 7.0	$ 9.6							
AS A % OF TOTAL:	11.6%	10.6%	10.2%	11.3%	9.7%							
AMOUNT TO WBE'S	$ -0-	$ .01	$ -0-	$ .09	$ .2							
CUMULATIVE	$ -0-	$ .01	$ .01	$ .10	$ .3							
AS A % OF TOTAL:	-0-	.06%	.04%	.16%	.3%							

FED. CONTRACTS EXECUTED –FY/85

AMOUNT EXECUTED MONTHLY ($ = MILLIONS)



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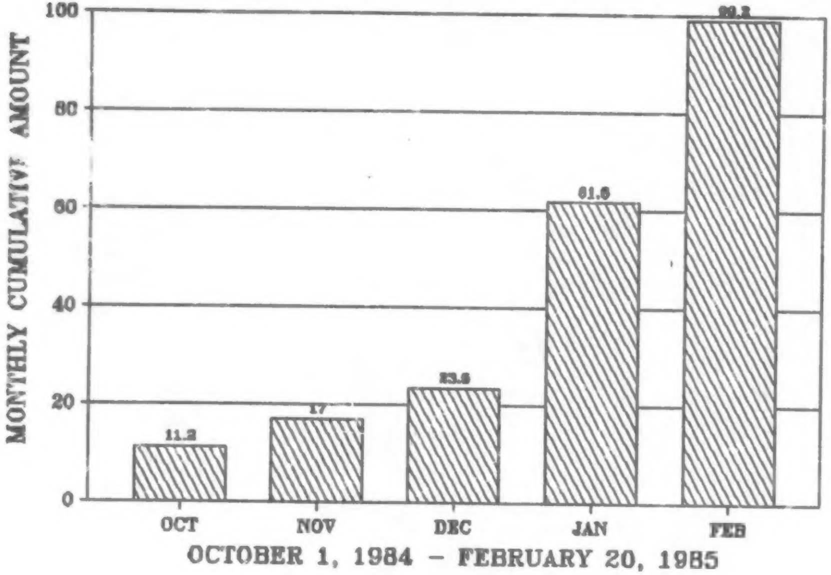
FED. CONTRACTS EXECUTED –FY/85

MONTHLY CUMULATIVE AMOUNT ($ = MILLIONS)



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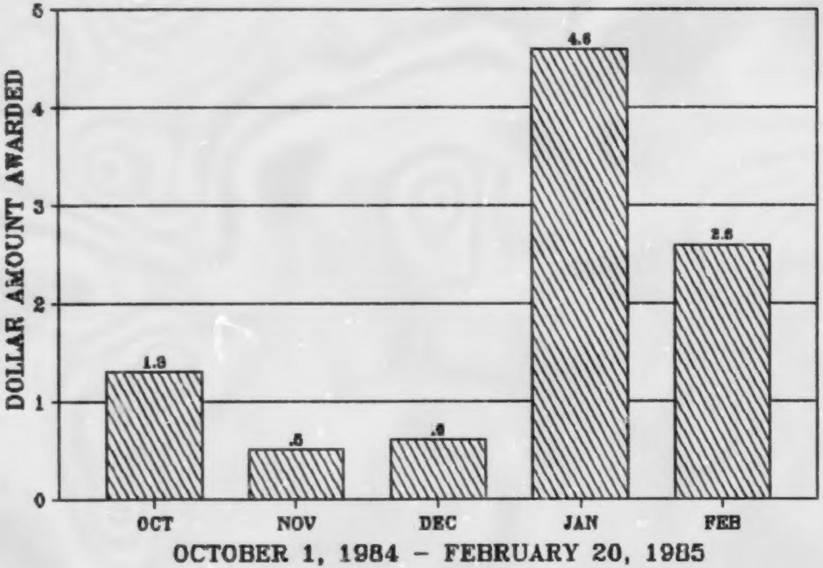
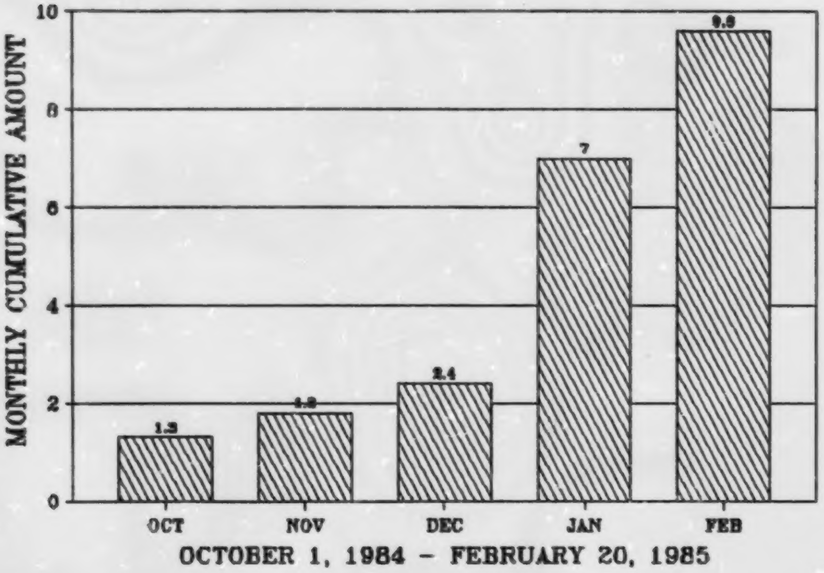


FED. CONTRACTS EXECUTED –FY/85

AMOUNT AWARDED TO DBE'S ($ = MILLIONS)

FED. CONTRACTS AWARDED TO DBE'S - FY-85

CUMULATIVE AMOUNT AWARDED TO DBE'S ($=MILLIONS)



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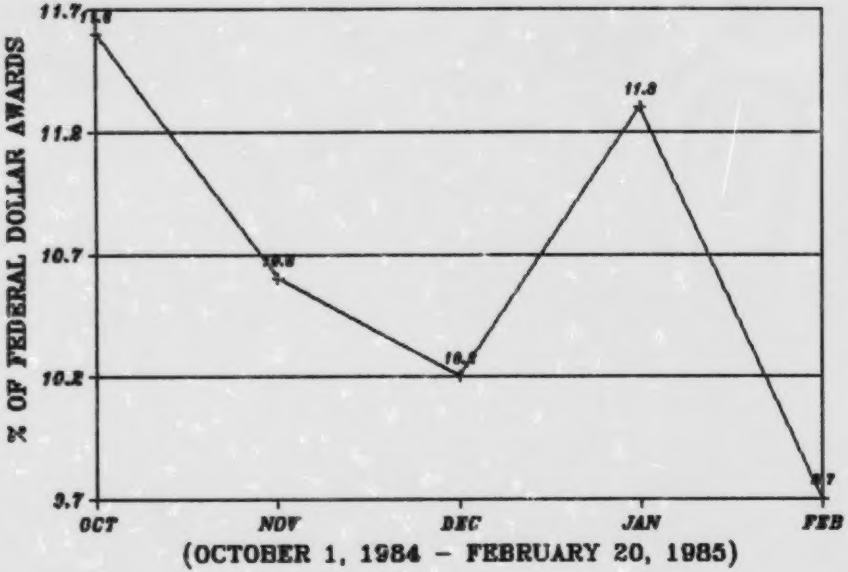
% OF FEDERAL DOLLAR AWARDS
TO DBE'S



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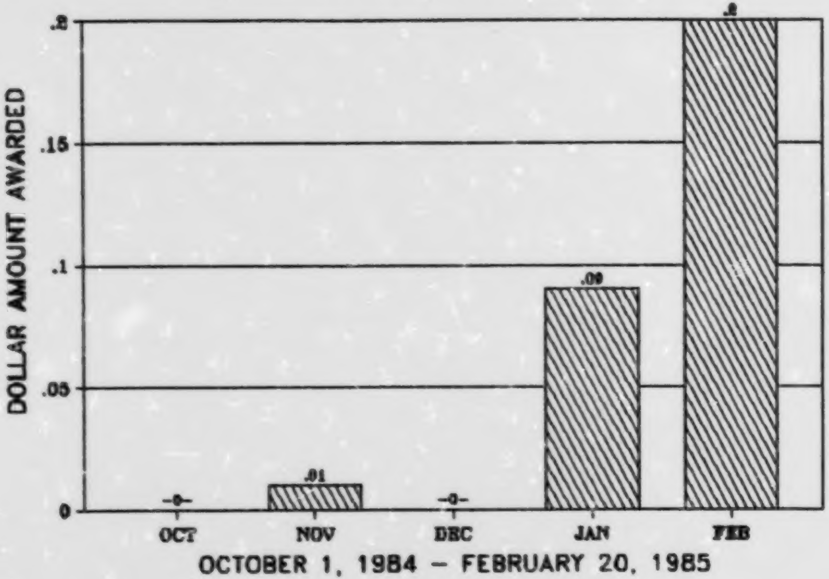
FED. CONTRACTS TO WBE'S - FY-85

AMOUNT EXECUTED MONTHLY ($=000,000)



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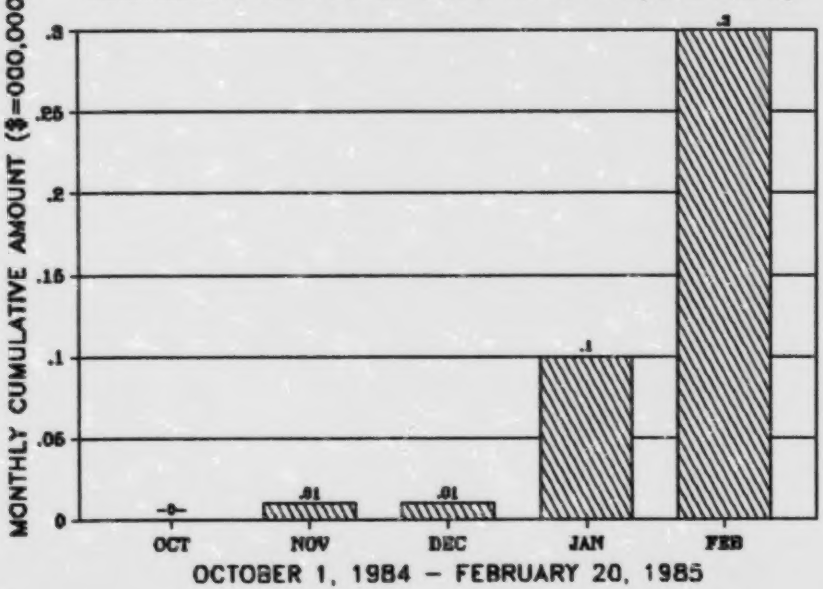
FED. CONTRACTS TO WBE'S – FY-85

CUMULATIVE AMOUNT AWARDED TO WBE'S ($=000,000)



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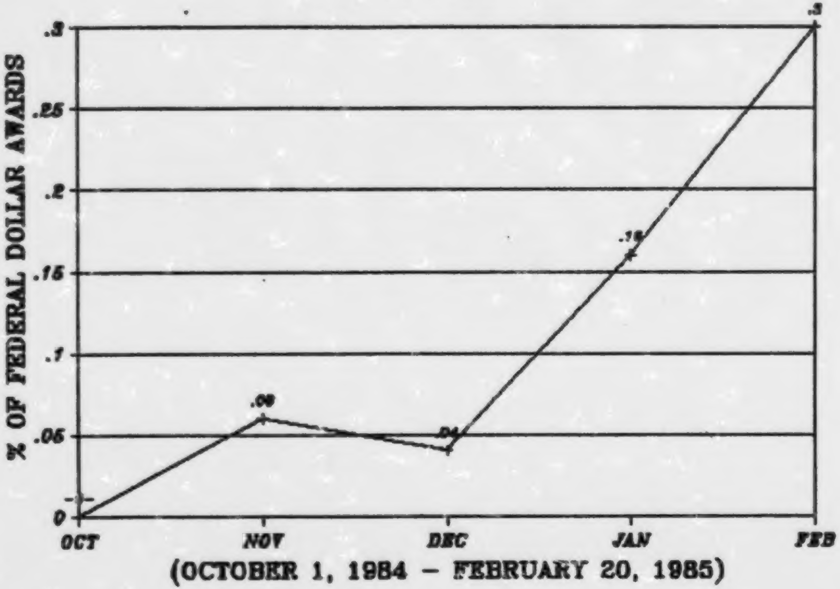
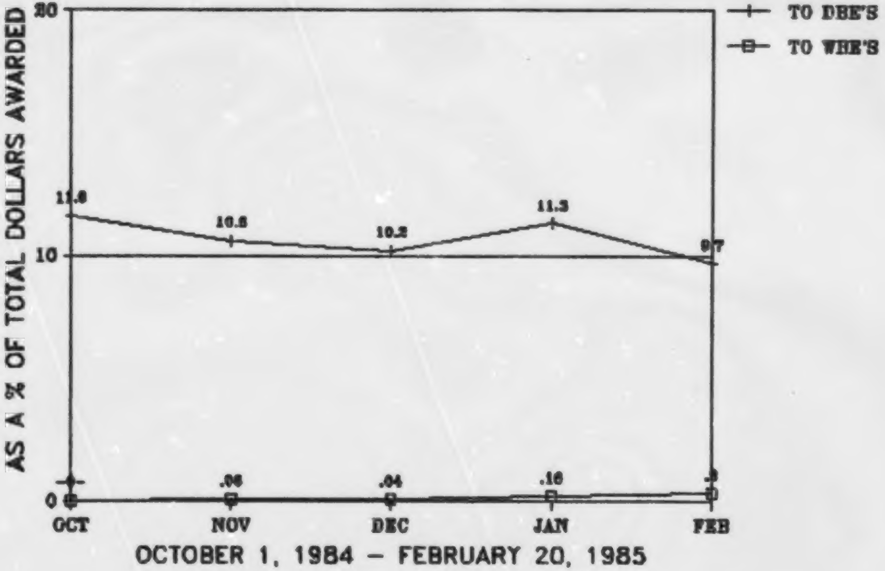
% OF FEDERAL DOLLAR AWARDS

TO WBE'S



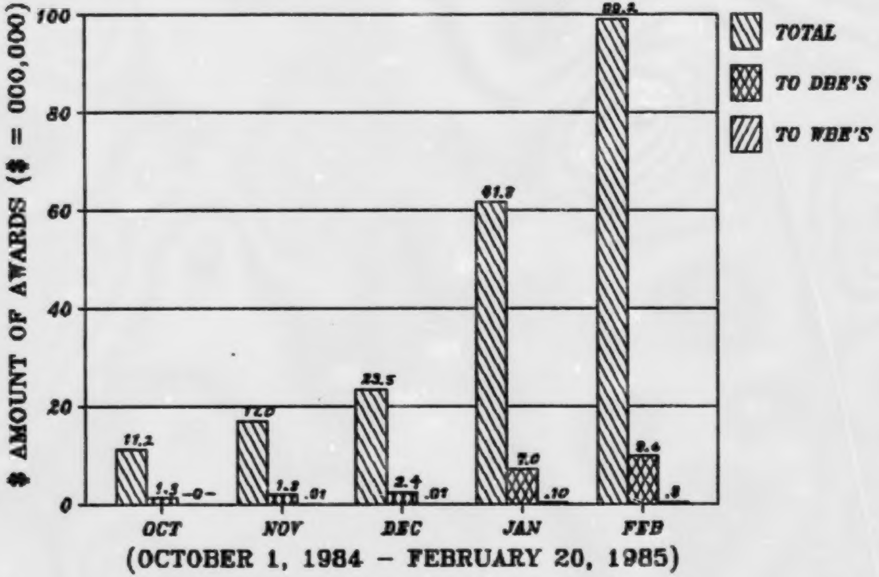
CUM. % OF FEDERAL CONTRACTS

AWARDED FOR FFY-85



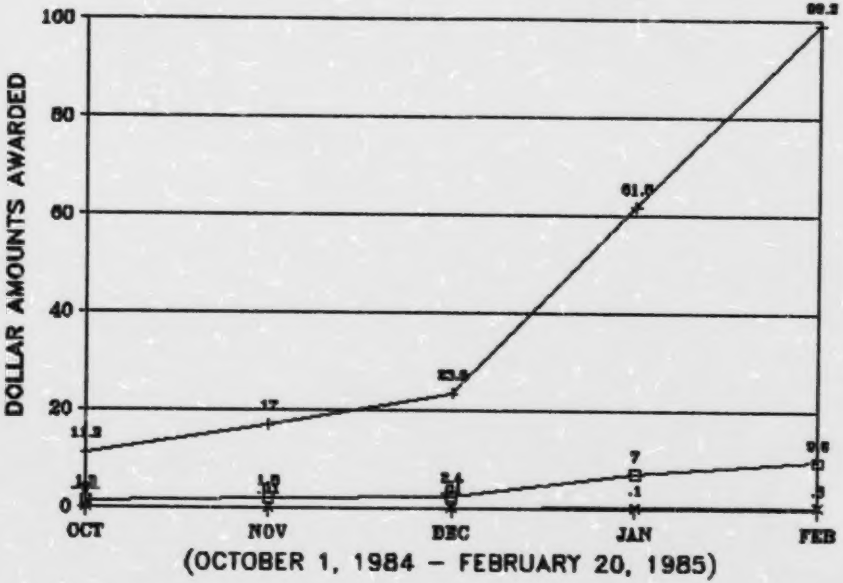
CUM. FEDERAL CONTRACTS EXECUTED

(BY TOTAL; DBE; AND WBE)



CUM. FED. CONTRACTS EXECUTED

BY TOTAL; DBE; & WBE AMOUNTS



D-

FLORIDA DEPARTMENT OF TRANSPORTATION

Contracts and Subcontracts
Awarded to DBE's
(October 1, 1984 - February 20, 1985)

FEDERAL PROGRAM

(AS OF 3/5/85)

	CONSTRUCTION	CONSULTANTS	RIGHT OF WAY	PLANNING	TOTAL FEDERAL DOLLARS AWARDED
TOTAL FEDERAL DOLLARS AWARDED	$ 89,465,834	$ 4,034,437	$ 4,350,823	$1,383,035	$ 99,234,129
TOTAL FEDERAL DOLLARS AWARDED TO DBE'S	$ 9,428,431	$ 100,000	$ -0-	$ 77,180	$ 9,605,611
PERCENT OF FEDERAL DOLLARS AWARDED TO DBE'S	10.7%	2.3%	-0-	5.6%	9.7%
PERCENT OF TOTAL FEDERAL DOLLARS AWARDED	90.1%	4.1%	4.4%	1.4%	100.0%

BREAKOUT OF FEDERAL CONTRACTS
AWARDED TO DBE'S, BY GROUP REPRESENTATION

MINORITY GROUP	NUMBER OF CONTRACTS		TOTAL DOLLARS AWARDED TO DBE'S		% OF TOTAL DBE DOLLARS	% OF TOTAL FEDERAL DOLLARS
	CONSTR.	OTHER	CONSTR.	OTHER		
ASIAN	2	3	$ 10,880	$ 77,180	0.9%	0.1%
BLACK	38	1	$2,708,445	$100,000	29.2%	2.8%
HISPANIC	23	-0-	$3,704,490	-0-	38.6%	3.7%
INDIAN	34	-0-	$3,004,616	-0-	31.3%	3.1%
SUBTOTALS:	97	4	$9,428,431	$177,180	100.0%	9.7%
TOTALS:	101		$9,605,611			

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(Cont.)

CERTIFIED DISADVANTAGED BUSINESS ENTERPRISES (DBE'S)
(Including those "Pre-Qualified")

(As of 3/5/85)

GROUP STATUS	PRE-QUALIFICATION				SUPPLY/SERVICES		TOTALS
	CONSTRUCTION		CONSULTING				
	NO	YES	NO	YES			
ASIAN	6	0	7	5	3	0	21
BLACK	79	3	7	6	5	6	106
HISPANIC	43	5	2	6	2	1	59
INDIAN	11	3	0	0	0	1	15
NON-MINORITY FEMALES	31	5	1	1	3	4	45
TOTALS:	170	16	17	18	13	12	246

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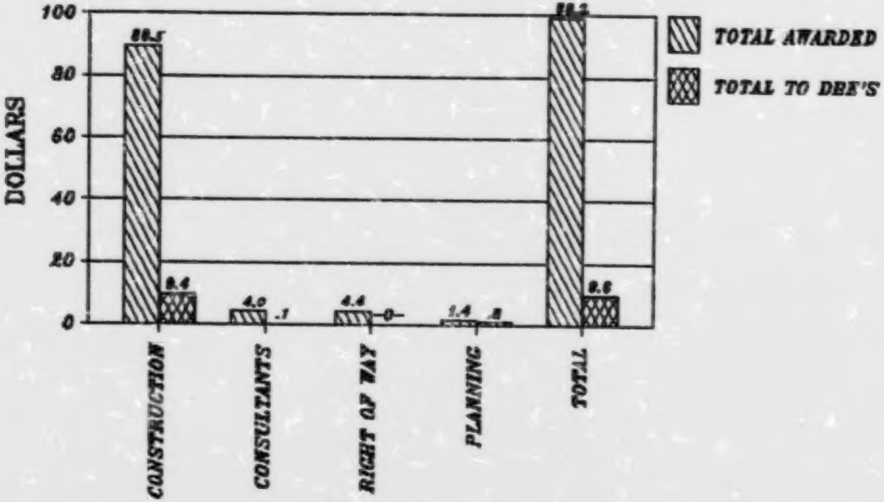
FEDERAL PROGRAM ($ = 000,000)

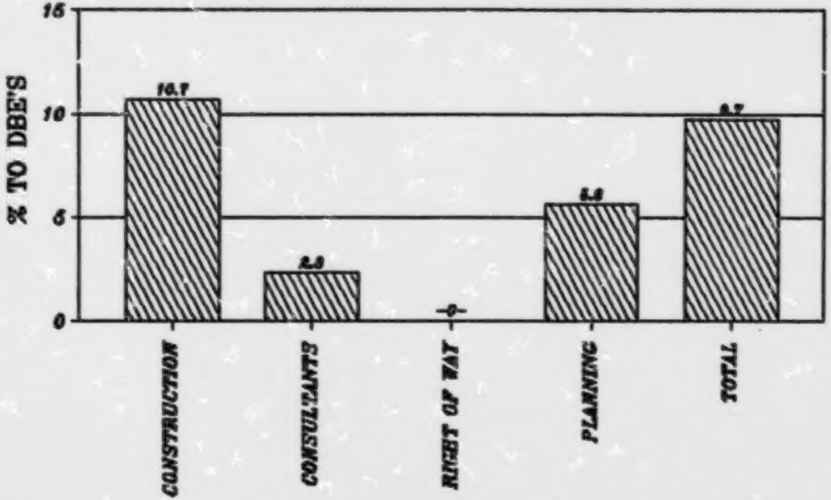
BY TYPES OF CONTRACTS AWARDED



(OCTOBER 1, 1984 - FEBRUARY 20, 1985)

% OF FEDERAL DOLLARS TO DBE'S

BY TYPES OF CONTRACTS AWARDED



(OCTOBER 1, 1984 - FEBRUARY 20, 1985)

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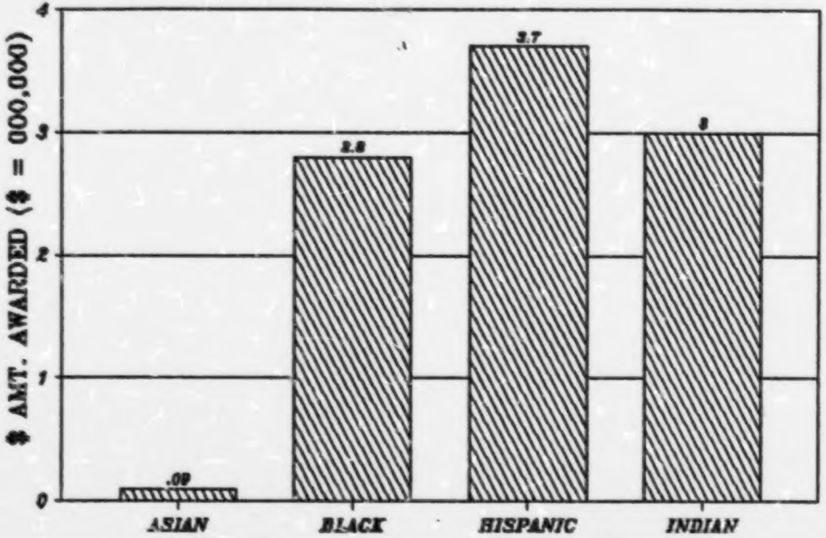
FEDERAL CONTRACT AWARDS TO DBE'S

BY MINORITY GROUP (TOTAL = $9.6M OF $99.2M AWARDED)



(OCTOBER 1, 1984 - FEBRUARY 20, 1985)

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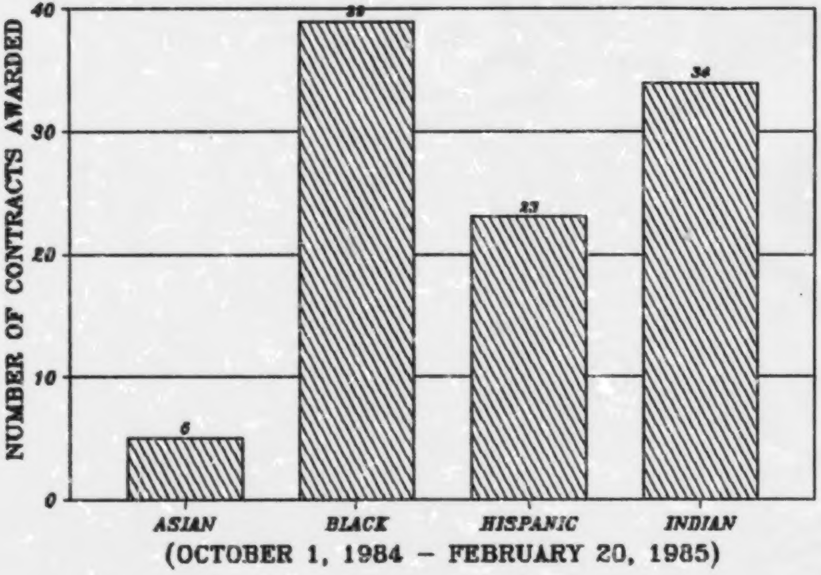
FEDERAL CONTRACT AWARDS TO DBE'S

(BY NUMBER OF CONTRACTS)



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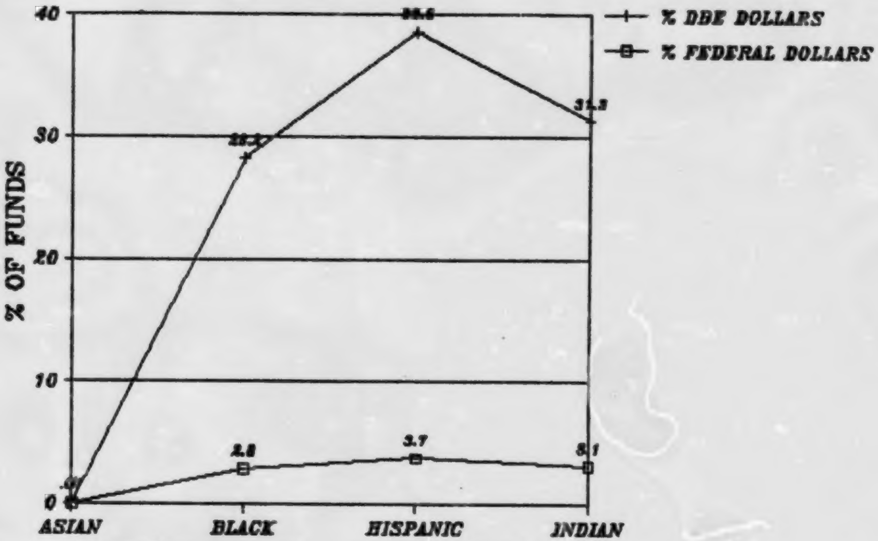
FEDERAL CONTRACT AWARDS TO DBE'S

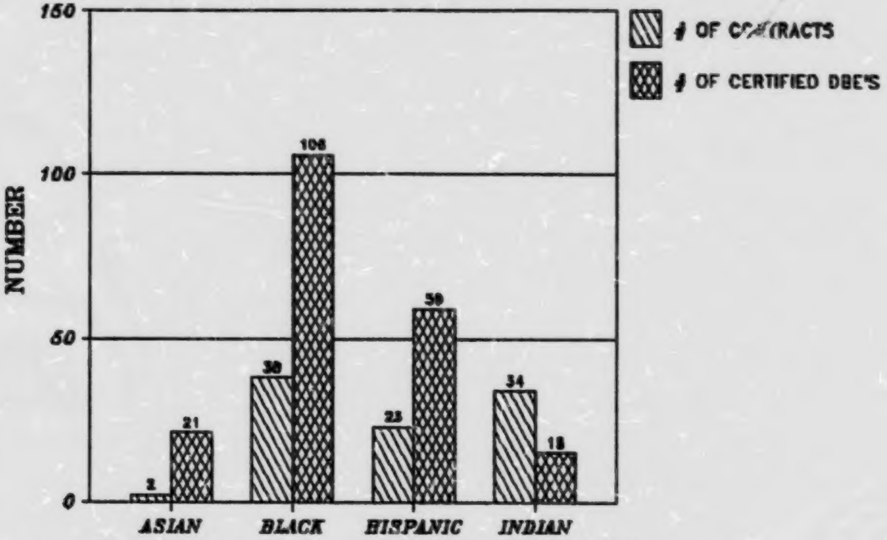
% OF FUNDS



(OCTOBER 1, 1984 - FEBRUARY 20, 1985)

FEDERAL CONTRACT AWARDS TO DBE'S

BY MINORITY GROUP (TOTAL = $9.6M OF $99.2M AWARDED)

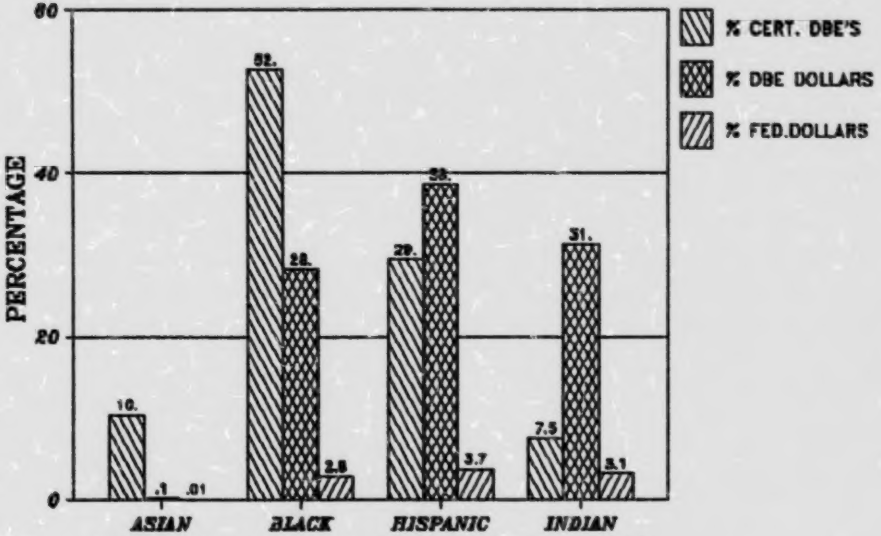


(OCTOBER 1, 1984 - FEBRUARY 20, 1985)

159

FEDERAL CONTRACT AWARDS TO DBE'S

BY MINORITY GROUP (TOTAL = $9.6M OF $99.2M AWARDED)



(OCTOBER 1, 1984 – FEBRUARY 20, 1985)

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E-1

STATE CONTRACTS EXECUTED MONTHLY
(BY TOTAL; DBE; & WBE AMOUNTS)
July 1, 1983 - June 30, 1984

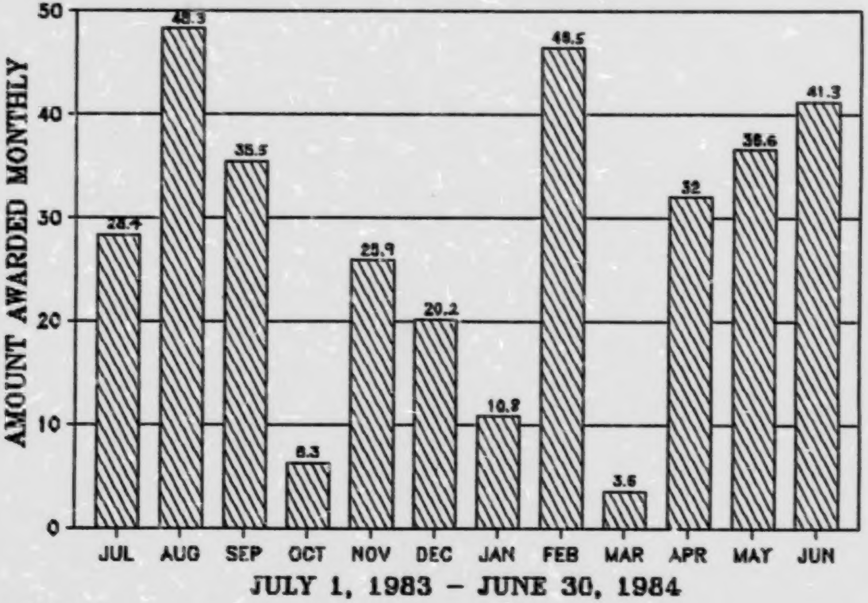
DBE GOAL = AT LEAST 10%
WBE GOAL = 2%

(As of 3/5/85)

	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
CONTRACTS EXECUTED	$ 28.4	$ 48.3	$ 35.5	$ 6.3	$ 25.9	$ 20.2	$ 10.8	$ 46.5	$ 3.6	$ 32.0	$ 36.6	$ 41.3
CUMULATIVE	$ 28.4	$ 76.7	$112.2	$118.5	$144.4	$164.6	$175.4	$221.9	$225.5	$257.5	$294.1	$333.4
AMOUNT TO DBE'S	$ 2.1	$ 3.9	$ 2.6	$ .8	$ 1.1	$ 1.8	$ .4	$ 8.0	$ .3	$ 3.9	$ 4.2	$ 5.1
CUMULATIVE	$ 2.1	$ 6.0	$ 8.6	$ 9.4	$ 10.5	$ 12.3	$ 12.7	$ 20.7	$ 21.0	$ 24.9	$ 29.1	$ 34.2
AS A % OF TOTAL:	7.4%	7.8%	7.6%	8.0%	7.3%	7.5%	7.2%	9.3%	9.3%	9.7%	9.9%	10.2
AMOUNT TO WBE'S	$ .3	$ .8	$ .2	$ .2	$ 3.1	$ .4	$ .5	$ 14.0	$ -0-	$ .2	$ .7	$ .7
CUMULATIVE	$ .3	$ 1.1	$ 1.3	$ 1.5	$ 4.6	$ 5.0	$ 5.5	$ 19.5	$ 19.5	$ 19.7	$ 20.4	$ 21.1
AS A % OF TOTAL:	1.1%	1.4%	1.2%	1.3%	3.2%	3.0%	3.1%	8.8%	8.6%	7.6%	6.9%	6.3

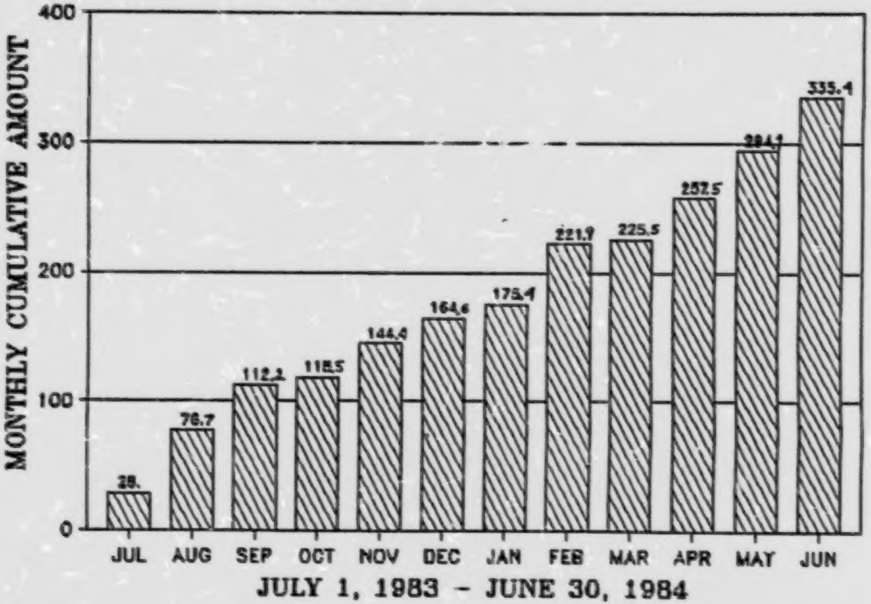
STATE PROGRAM ($335.4M)

AMOUNT AWARDED MONTHLY



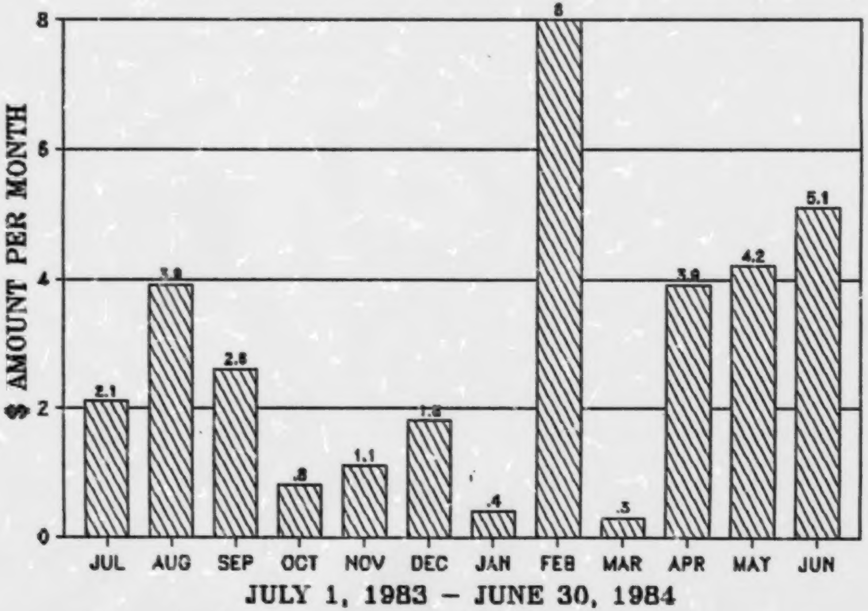
STATE PROGRAM ($335.4M)

CUMULATIVE MONTHLY AWARDS



STATE CONTRACTS AWARDED TO DBE'S

AMOUNT AWARDED MONTHLY ($ = 000,000)



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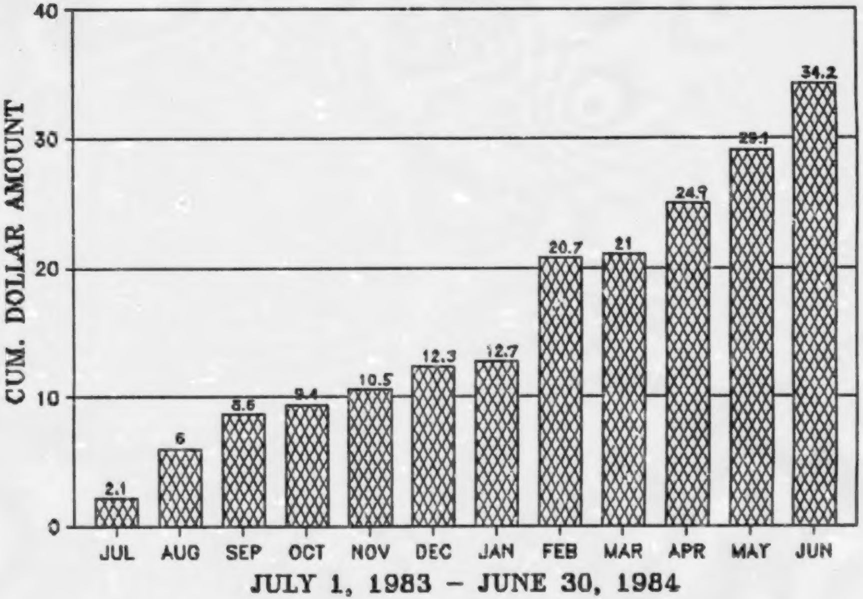
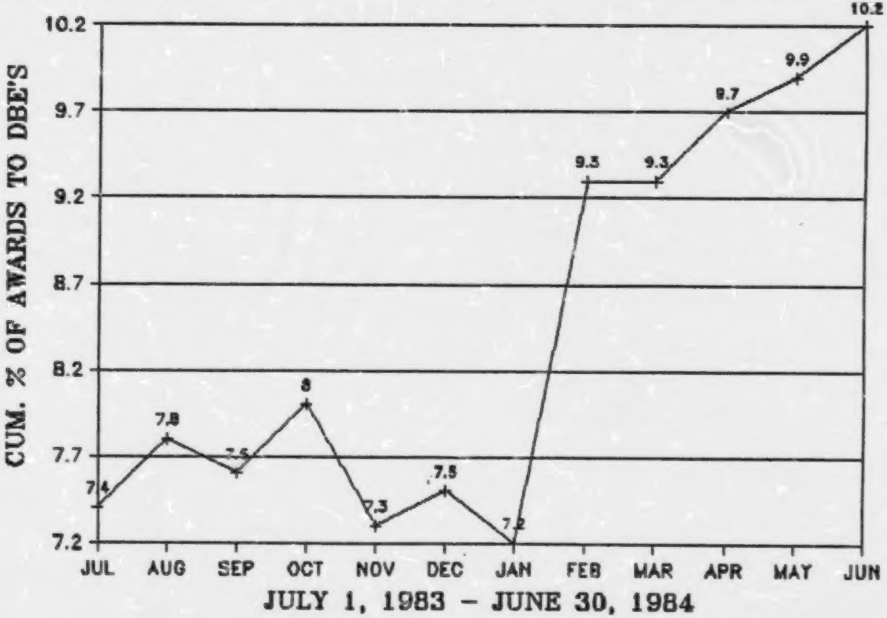
CUM. CONTRACT AWARDS TO DBE'S

AMOUNT AWARDED ($ = 000,000)



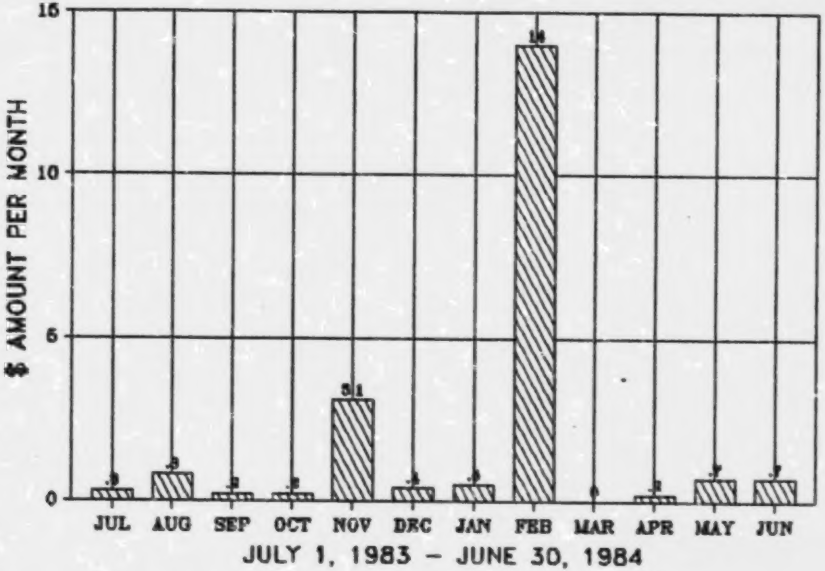
STATE CONTRACTS EXECUTED

CUM. % OF DOLLARS TO DBE'S ($34.2M)/10.2% OF $335.4M)



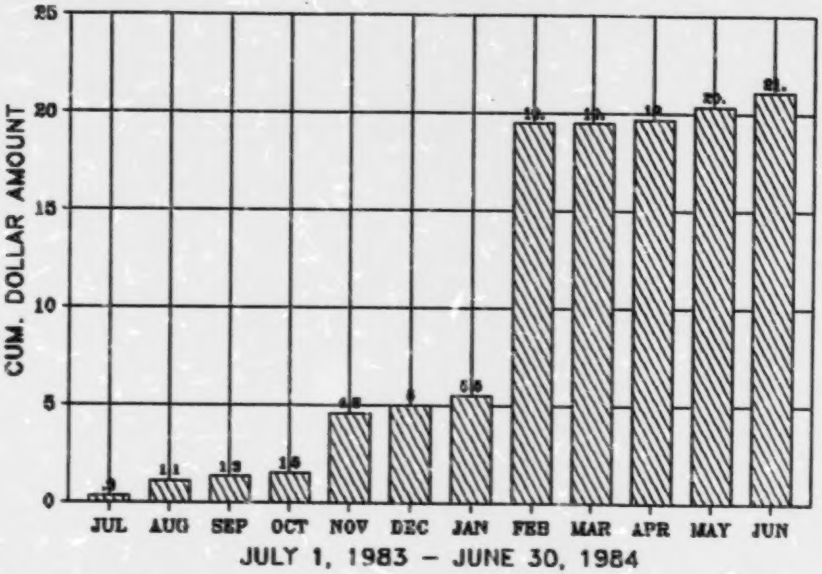
STATE CONTRACTS AWARDED TO WBE'S

($ = 000,000)



CUM. CONTRACT AWARDS TO WBE'S

($ = 000,000)



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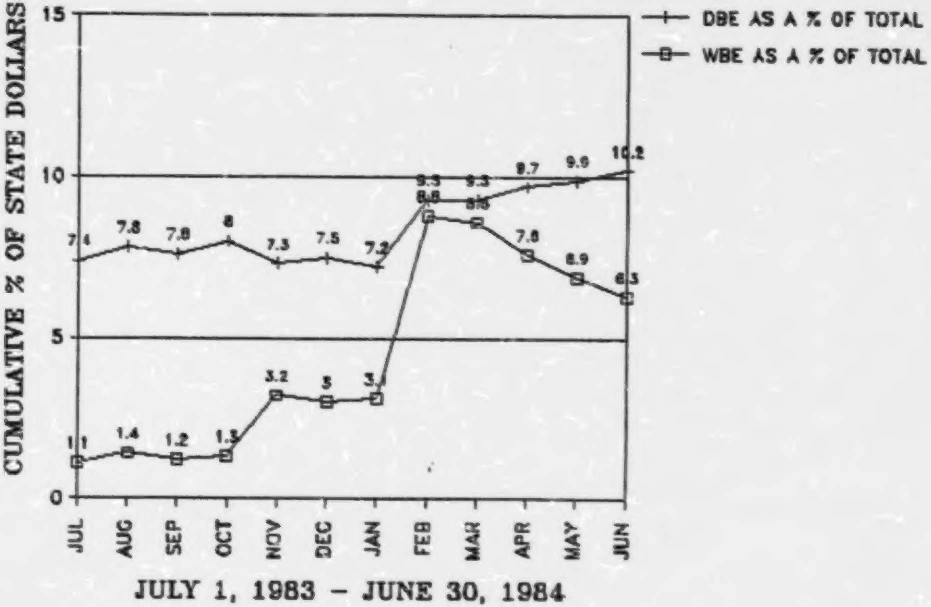
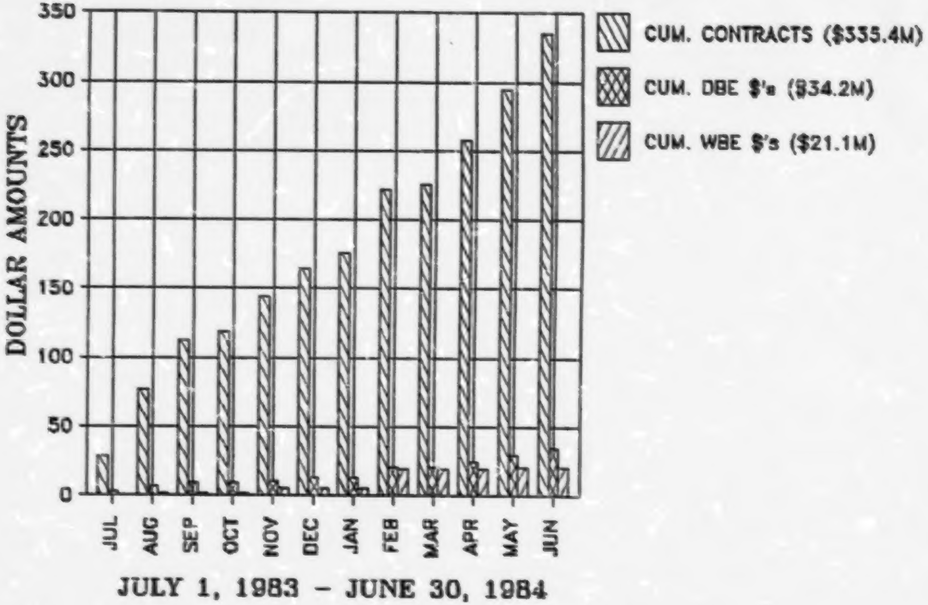
CUMULATIVE % OF STATE DOLLARS
AWARDED TO DBE'S AND WBE'S



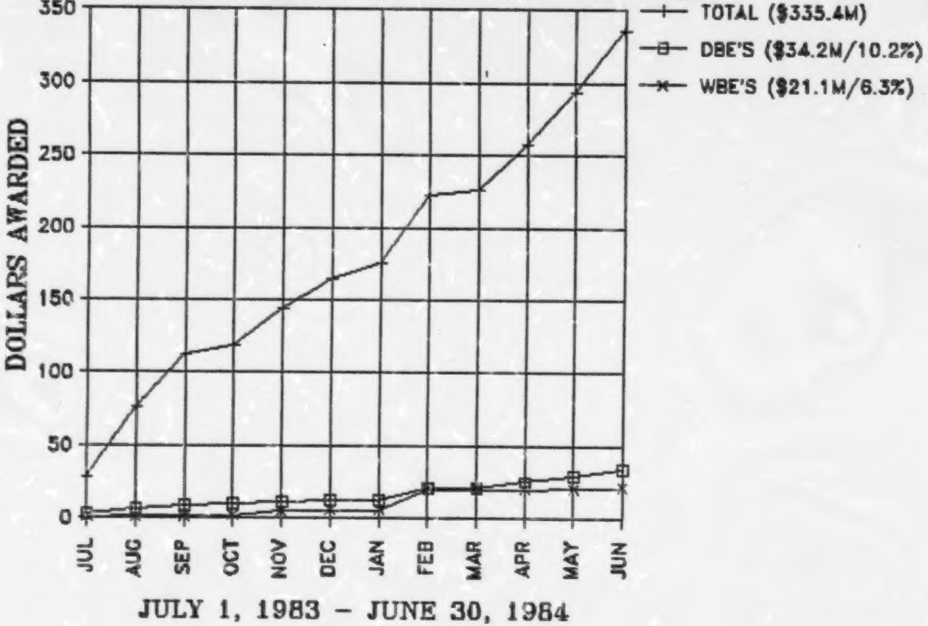
CUM. AMT. – STATE CONTRACTS EXECUTED

(BY TOTAL; DBE; & WBE AMOUNTS)



STATE PROGRAM ($ = 000,000)

CUMULATIVE CONTRACTS EXECUTED



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FLORIDA DEPARTMENT OF TRANSPORTATION
Contracts and Subcontracts
Awarded to DBE's
(July 1, 1983 - June 20, 1984)

(As of 3/5/85)

STATE PROGRAM

	CONSTRUCTION	CONSULTANTS	RIGHT OF WAY	PLANNING	TOTAL STATE DOLLARS AWARDED	PURCHASING[1]
TOTAL STATE DOLLARS AWARDED	$308,146,364	$23,106,588	$ 3,469,739	$ 666,013	$335,388,704	$40,609,064
TOTAL STATE DOLLARS AWARDED TO DBE'S	$ 28,982,226	$ 4,938,367	$ 148,760	$ 114,085	$ 34,183,438	$ 1,296,986
PERCENT OF STATE DOLLARS AWARDED TO DBE'S	9.4%	21.4%	4.3%	17.1%	10.2%	3.2%
PERCENT OF TOTAL STATE DOLLARS AWARDED	91.9%	6.9%	1.0%	.2%	100.0%	

BREAKOUT OF STATE CONSTRUCTION CONTRACTS AWARDED TO DBE'S, BY GROUP REPRESENTATION
(Represents 91.9% of Total State Funds Awarded)

MINORITY GROUP	NUMBER OF CONTRACTS	TOTAL DOLLARS AWARDED TO DBE'S	% OF TOTAL DBE DOLLARS	% OF TOTAL STATE DOLLARS
ASIAN	2	$ 87,174	0.3%	0.02%
BLACK	225	$ 8,696,257	30.7%	2.82%
HISPANIC	107	$12,428,003	43.9%	4.03%
INDIAN	113	$ 7,770,792	25.2%	2.52%
TOTALS:	447	$28,982,226	100.0%	9.4%

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[1] Purchasing - vendors/suppliers are guided by the definition contained in 287 FS., which is incompatible with the DBE definition in 339 FS. While such vendors/suppliers are registered with the Department of General Services, they do not, nor do we, CERTIFY such firms as a minority, and especially as a Disadvantaged Business Enterprise. Additionally, since the majori of commodity contracting is administered under STATE CONTRACTING REGULATIONS (under the control and authority of the Department of General Services), the FDOT lacks the ability to affect affirmative action or carryout of legislative mandates intended to bring about economic parity. Because of the definitional incompatibility and our inability and lack of authority to affect affirmative action contracting changes in the purchase of commodities, we are discounting "PURCHASING" from our overall 10% DBE goal, & instead, are reporting as a separate category, according to the 5% encouragement criteria, as identified in 287 FS.

To properly evaluate state funds subject to the 5% encouragement criteria in 287, both consultant and purchasing funds are applicable. While the Department certifies DBE consultants, as stated above, we do not certify vendors or suppliers. Therefore, while eligible consultants qualify as DBE's (subject to Department certification), they also qualify as MBE's under 287 FS.

Therefore, the following analysis is provided to evaluate against the 5% encouragement criteria:

	CONSULTANTS	PURCHASING	TOTAL
TOTAL STATE DOLLARS AWARDED	$23,106,588	$40,609,064	$63,715,652
TOTAL STATE DOLLARS AWARDED TO MBE'S [2]	$ 4,938,367	$ 1,296,886	$ 6,235,253
PERCENT OF APPLICABLE STATE DOLLARS AWARDED TO MBE'S	21.4%	3.2%	9.8%
PERCENT OF APPLICABLE STATE DOLLARS	36.3%	63.7%	100.0%

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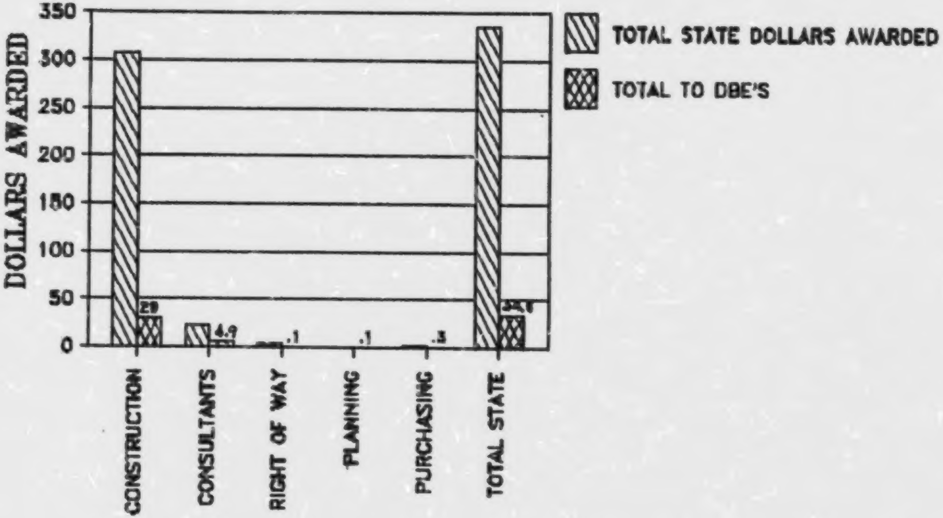
[2] The definition in 287 FS. includes **WOMEN** and **PHYSICALLY AND MENTALLY DISABLED PERSONS**

STATE PROGRAM ($ = 000,000)

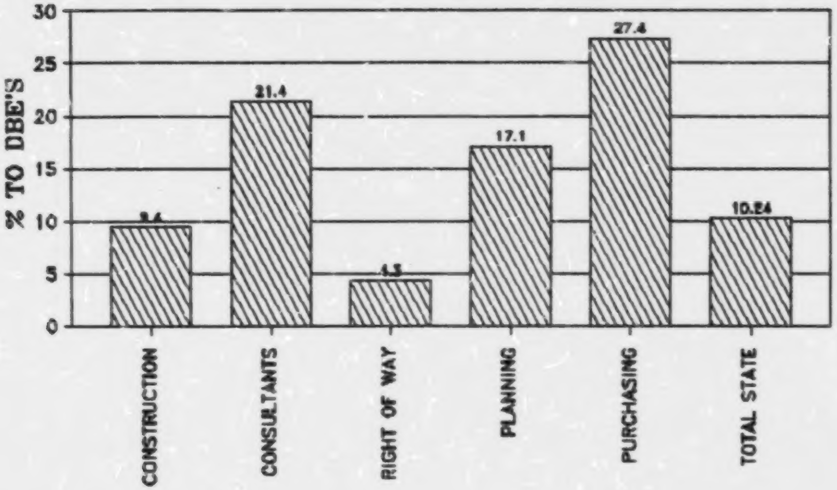
BY TYPES OF CONTRACTS AWARDED



JULY 1, 1983 – JUNE 30, 1984

% OF STATE DOLLARS TO DBE'S

BY TYPES OF CONTRACTS AWARDED



JULY 1, 1983 - JUNE 30, 1984

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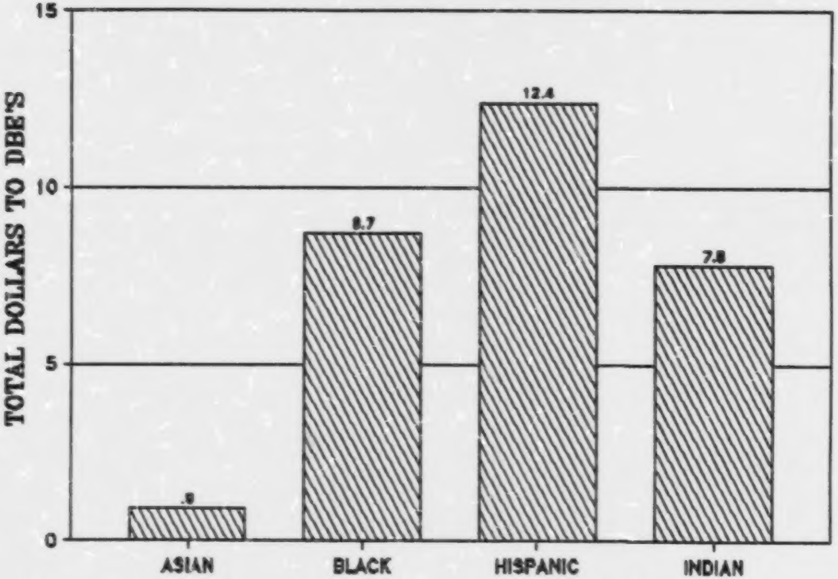
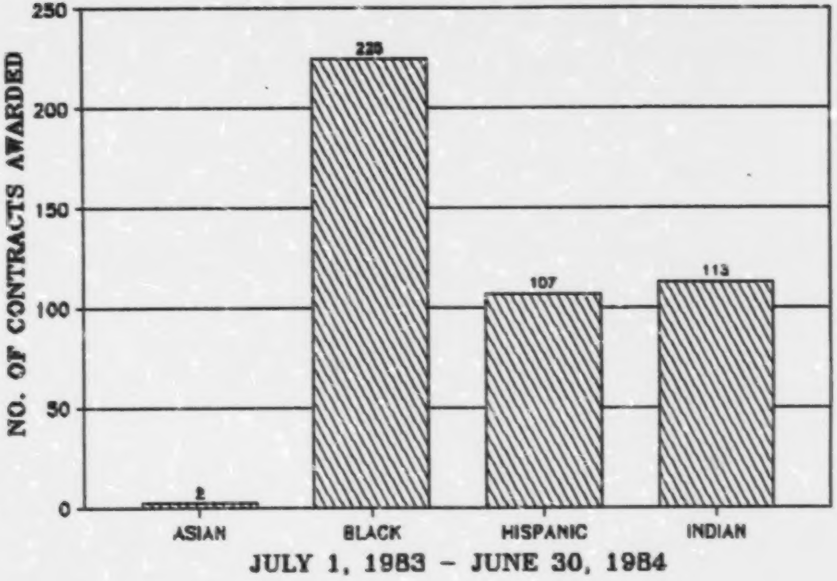


STATE CONSTR.CONTRACTS ($ = 000,000)

REPRESENTING 91.6% OF ALL STATE FUNDS AWARDED

STATE CONSTR.CONTRACTS ($ = 000,000)

REPRESENTING 91.6% OF ALL STATE FUNDS AWARDED



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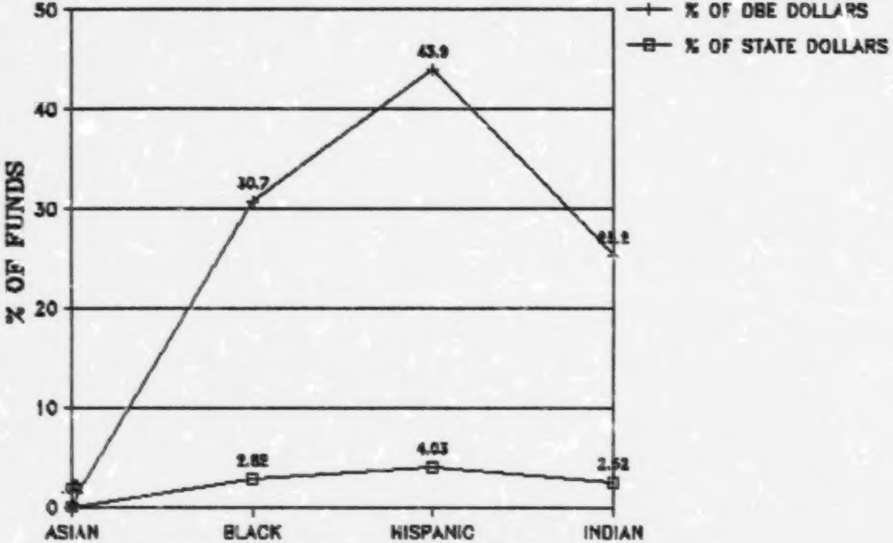
STATE CONSTR.CONTRACTS ($308,146,364)

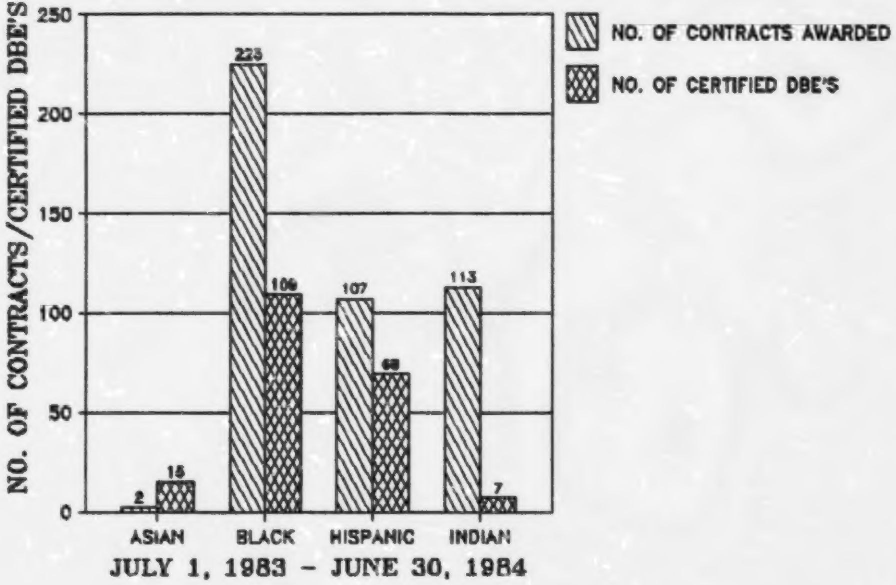
% OF FUNDS



JULY 1, 1983 - JUNE 30, 1984

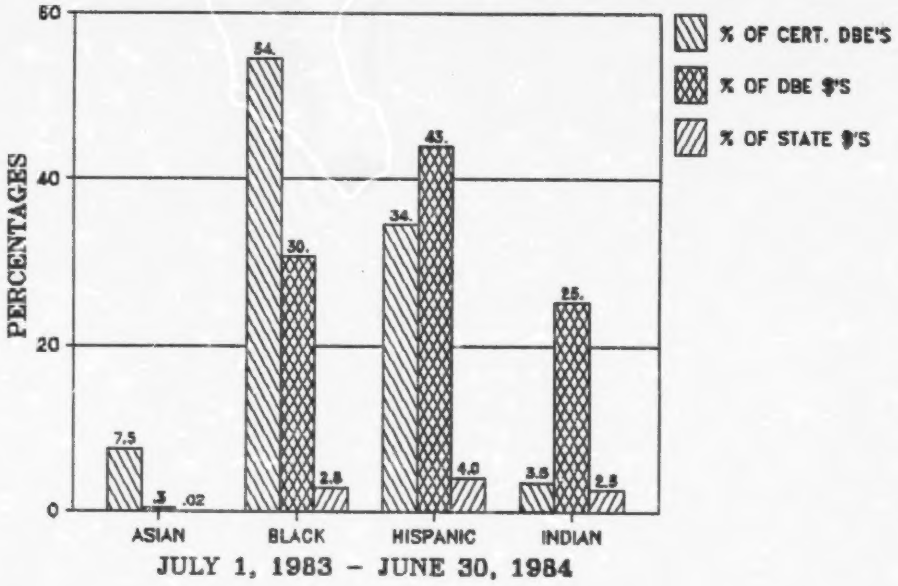
STATE CONSTRUCTION CONTRACTS

REPRESENTING 91.6% OF ALL STATE FUNDS AWARDED



STATE CONSTR.CONTRACTS ($308,146,364)

REPRESENTING 91.8% OF ALL STATE FUNDS AWARDED



F-

STATE CONTRACTS EXECUTED MONTHLY
(BY TOTAL; DBE; & WBE AMOUNTS)
July 1, 1984 - February 20, 1985

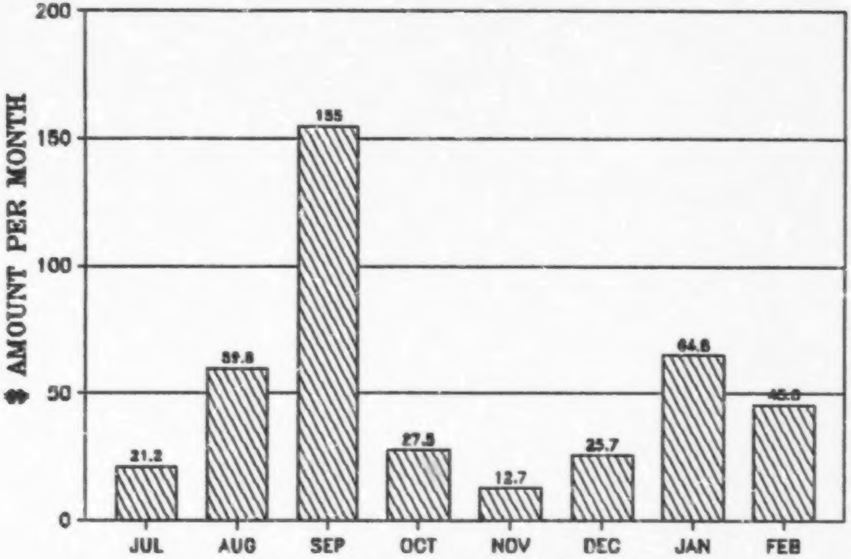
DBE GOAL = AT LEAST 10%
WBE GOAL = 2%

(As of 3/5/85)

	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN
CONTRACTS EXECUTED	$ 21.2	$ 59.8	$155.0	$ 27.5	$ 12.7	$ 25.7	$ 64.8	$ 45.6				
CUMULATIVE	$ 21.2	$ 81.0	$236.0	$263.5	$276.2	$301.9	$366.7	$412.3				
AMOUNT TO DBE'S	$ 3.4	$ 9.7	$ 20.7	$ 2.7	$ 1.0	$ 2.8	$ 7.4	$ 4.3				
CUMULATIVE	$ 3.4	$ 13.1	$ 33.8	$ 36.5	$ 37.5	$ 40.3	$ 47.7	$ 52.0				
AS A % OF TOTAL:	16.0%	16.2%	14.3%	13.9%	13.6%	13.4%	13.0	12.6%				
AMOUNT TO WBE'S	$ .08	$ .3	$ 1.7	$ .2	-0-	$ .2	$ .2	$ .4				
CUMULATIVE	$ .08	$ .4	$ 2.1	$ 2.3	$ 2.3	$ 2.5	$ 2.7	$ 3.1				
AS A % OF TOTAL:	.4%	.5%	.9%	.9%	.8%	.8%	.7%	.8%				

STATE PROGRAM TO DATE

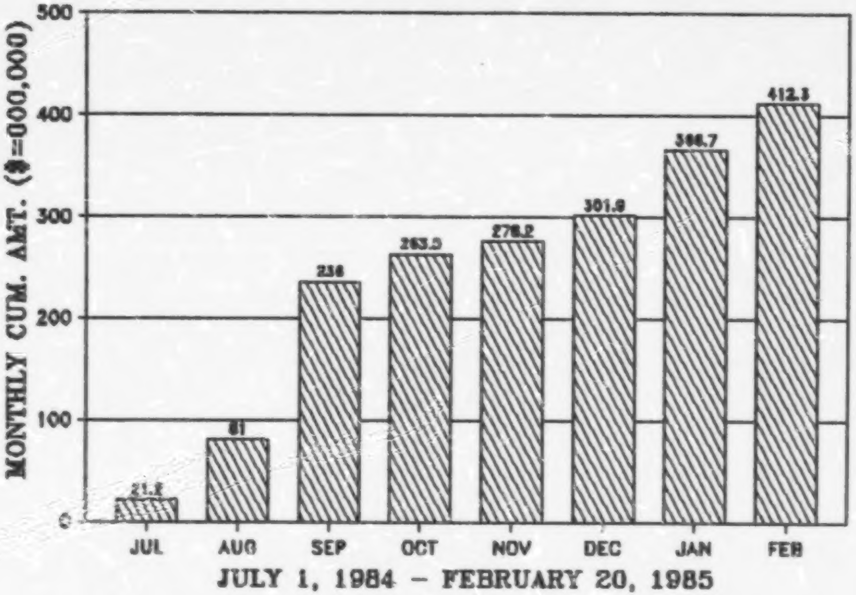
$ AMOUNT PER MONTH



JULY 1, 1984 – FEBRUARY 20, 1985

STATE PROGRAM TO DATE

CUM. AMT.- STATE CONTRACTS EXECUTED



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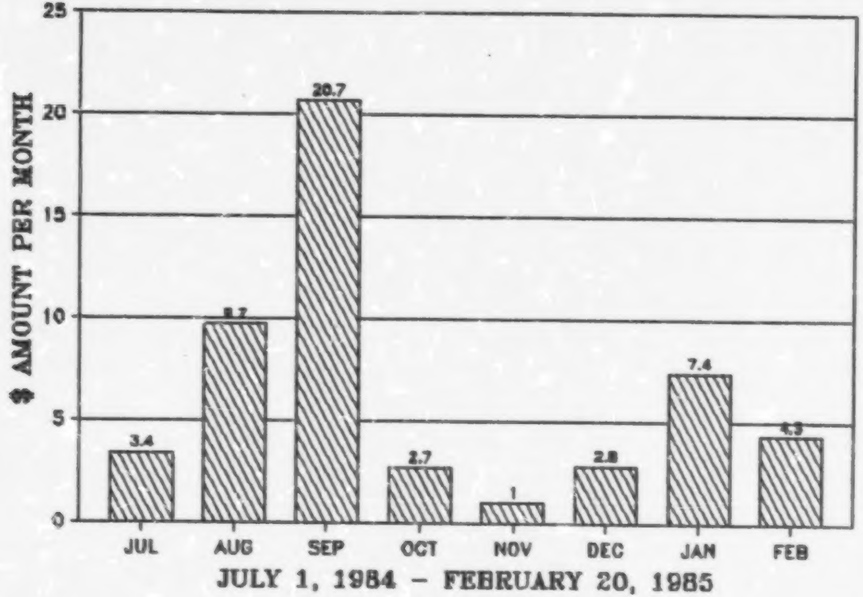
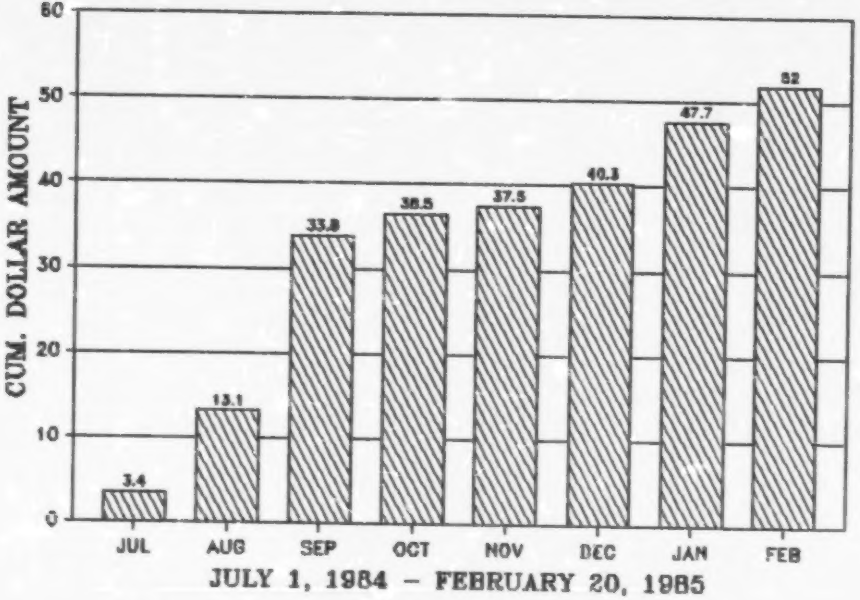
STATE CONTRACTS AWARDED TO DBE'S

($ = 000,000)



CUM. CONTRACT AWARDS TO DBE'S

($ = 000,000)



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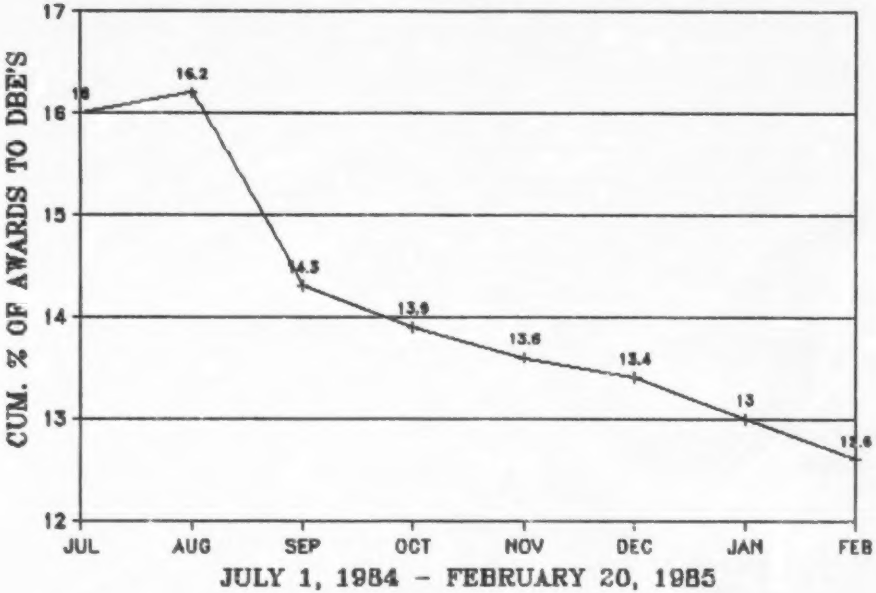
STATE CONTRACTS AWARDED TO DBE'S

CUM.% OF DOLLARS TO DBE'S ($52M/12.6% OF $412.3M)



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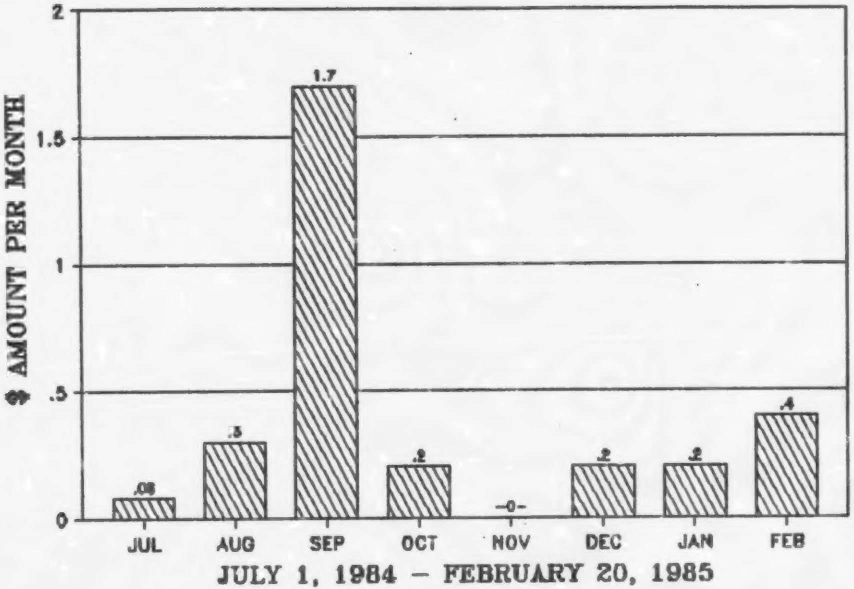
STATE CONTRACTS AWARDED TO WBE'S

($ = 000,000)



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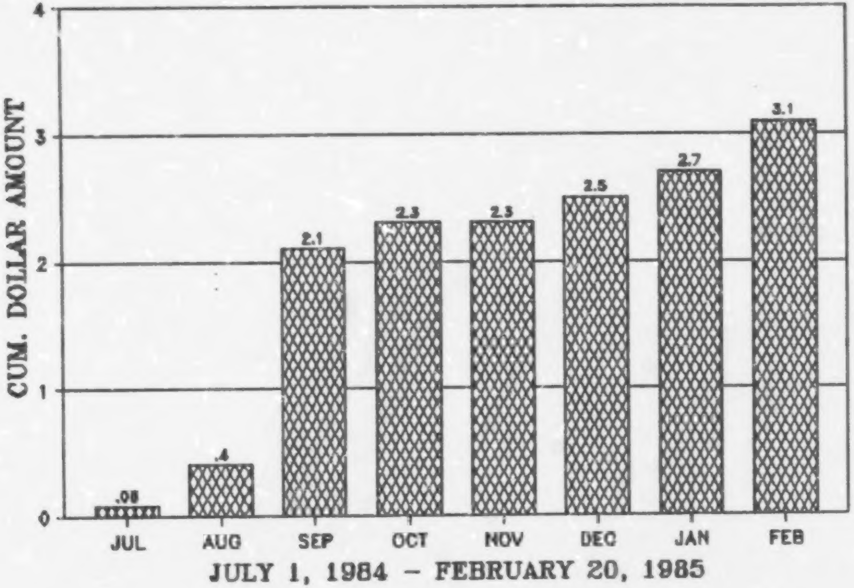
CUM. CONTRACT AWARDS TO WBE'S

($ = 000,000)



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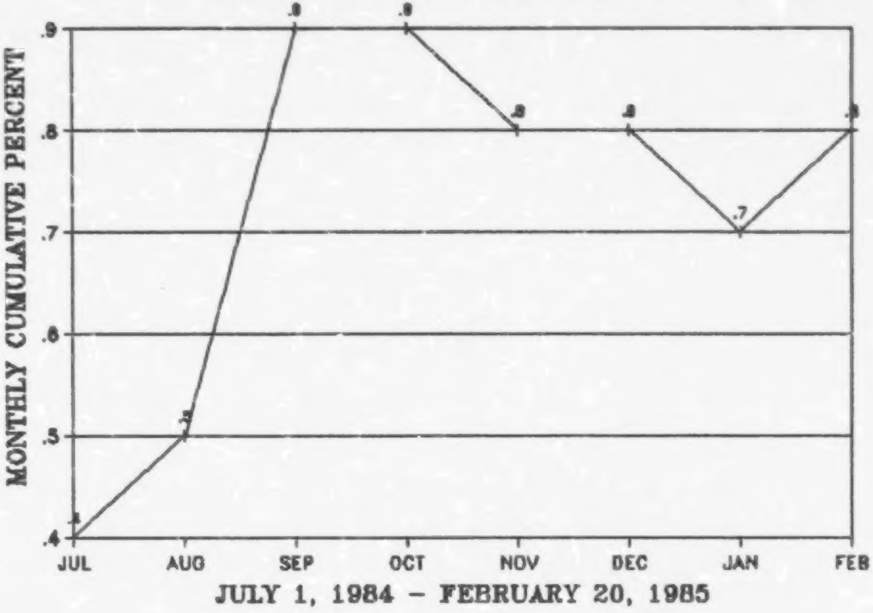
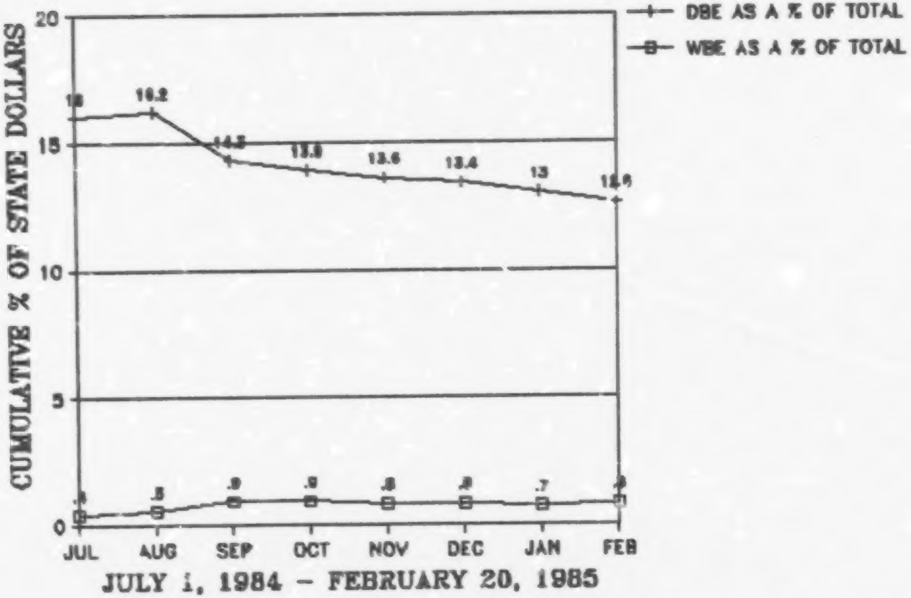
CUM. % – STATE CONTRACTS EXECUTED

(TOTAL AWARDS TO DATE = $412.3M/ WBE = $3.1M)



CUMULATIVE % OF STATE DOLLARS

TO DBE'S AND WBE'S



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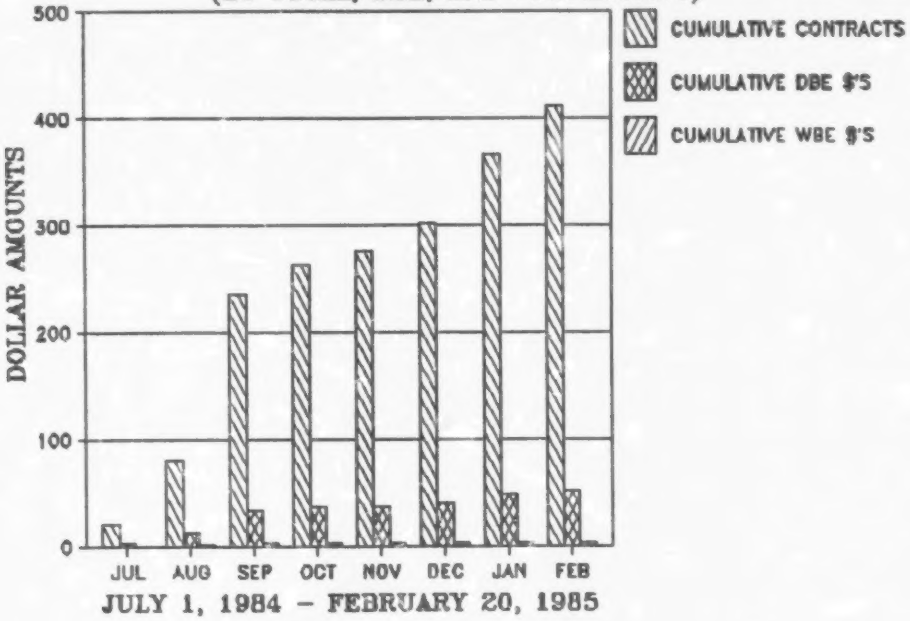
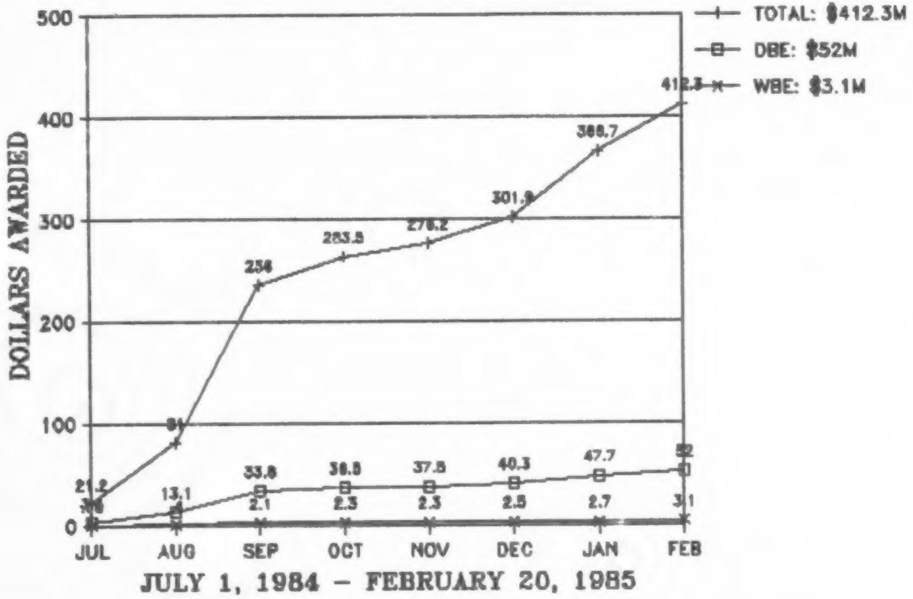


CUM. AMT.- STATE CONTRACTS EXECUTED

(BY TOTAL; DBE; AND WBE AMOUNT)

STATE PROGRAM ($ = 000,000)

CUMULATIVE CONTRACTS EXECUTED



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FL

FLORIDA DEPARTMENT OF TRANSPORTATION

Contracts and Subcontracts Awarded to DBE's

(July 1, 1984 - February 20, 1985)

(As of 3/5/85

STATE PROGRAM

	CONSTRUCTION	CONSULTANTS	RIGHT OF WAY	PLANNING	TOTAL STATE DOLLARS AWARDED	PURCHASING[1/]
TOTAL STATE DOLLARS AWARDED	$369,779,401	$34,033,676	$ 6,899,526	$1,553,546	$412,269.347	$26,979,508
TOTAL STATE DOLLARS AWARDED TO DBE'S	$ 48,089,343	$ 3,863,234	-0-	$ 87,900	$ 52,040,477	$ 756,981
PERCENT OF STATE DOLLARS AWARDED TO DBE'S	13%	11.3%	-0-	5.6%	12.6%	2.8%
PERCENT OF TOTAL STATE DOLLARS AWARDED	89.7%	8.2%	1.7%	.4%	100.0%	

BREAKOUT OF STATE CONTRACTS
AWARDED TO DBE'S, BY GROUP REPRESENTATION

MINORITY GROUP	NUMBER OF CONTRACTS		TOTAL DOLLARS AWARDED TO DBE'S		% OF TOTAL DBE DOLLARS	% OF TOTAL STATE DOLLARS
	CONSTR.	OTHER	CONSTR.	OTHER		
ASIAN	5	4	$ 231,581	$ 237,900	1.0%	0.1%
BLACK	144	1	$10,608,837	$ 100,000	20.6%	2.6%
HISPANIC	75	7	$27,713,871	$3,613,234	60.1%	7.[illegible]%
INDIAN	117	-0-	$ 9,535,054	-0-	18.3%	2.3%
SUBTOTALS:	341	12	$48,089,343	$3,951,134	100.0%	12.6%
TOTALS:	353		$52,040,477			

[1/] Purchasing - vendors/suppliers are guided by the definition contained in 287 FS., which is incompatible with the DBE definition in 339 FS. While such vendors/suppliers are registered with the Department of General Services, they do not, nor do we, CERTIFY such firms as a minority, and specifically as a Disadvantaged Business Enterprise. Additionally, since the majority of commodity contracting is administered under STATE CONTRACTING REGULATIONS (under the control and authority of the Department of General Services), the FDOT lacks the ability to affect affirmative action or carryout of legislative mandates intended to bring about economic parity. Because of the definitional incompatibility and our inability and lack of authority to affect affirmative action contracting changes in the purchase of commodities, we are discounting"PURCHASING" from our overall 10% DBE goal, and instead, are reporting as a separate category according to the 5% encouragement criteria, as identified in 287 FS.

To properly evaluate state funds subject to the 5% encouragement criteria in 287, both consultant and purchasing funds are applicable. While the Department certifies DBE consultants, as stated above, we do not certify vendors or suppliers. Therefore, while eligible consultants qualify as DBE's (subject to Department certification), they also qualify as MBE's under 287 FS.

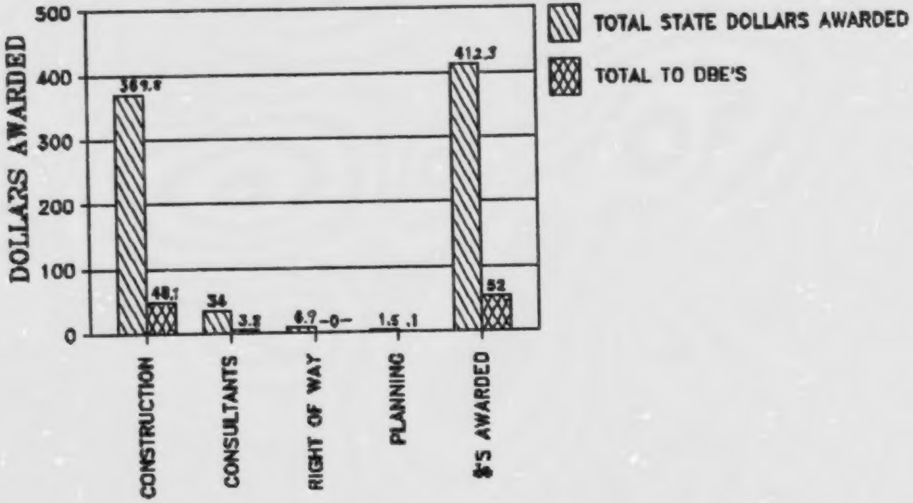
Therefore, the following analysis is provided to evaluate against the 5% encouragement criteria:

	CONSULTANTS	PURCHASING	TOTAL
TOTAL STATE DOLLARS AWARDED	$34,033,401	$26,979,508	$61,013,184
TOTAL STATE DOLLARS AWARDED TO MBE'S 2/	$ 3,863,234	$ 756,981	$ 4,620,215
PERCENT OF APPLICABLE STATE DOLLARS AWARDED TO MBE'S	11.3%	2.8%	7.6%
PERCENT OF APPLICABLE STATE DOLLARS	55.8%	44.2%	100.0%

2/ The definition in 287 FS. includes WOMEN and PHYSICALLY AND MENTALLY DISABLED PERSONS

STATE PROGRAM ($ = 000,000)

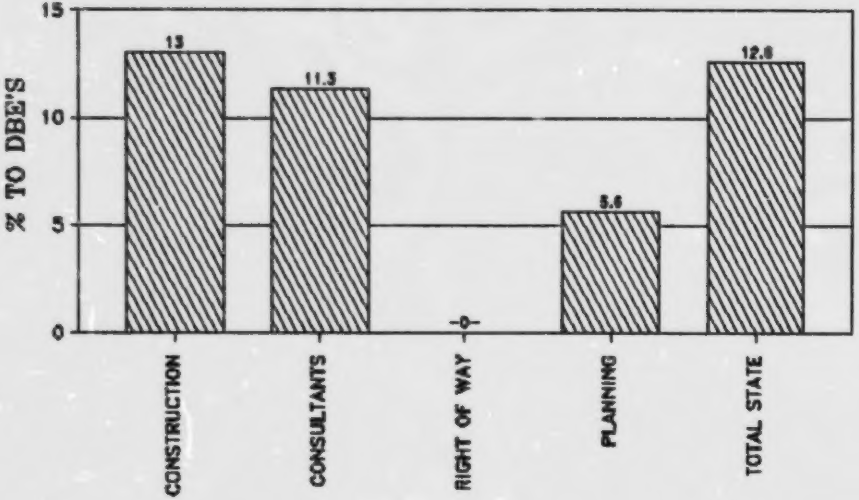
BY TYPES OF CONTRACTS AWARDED



JULY 1, 1984 – FEBRUARY 20, 1985

% OF STATE DOLLARS TO DBE'S

BY TYPES OF CONTRACTS AWARDED



JULY 1, 1984 - FEBRUARY 20, 1985

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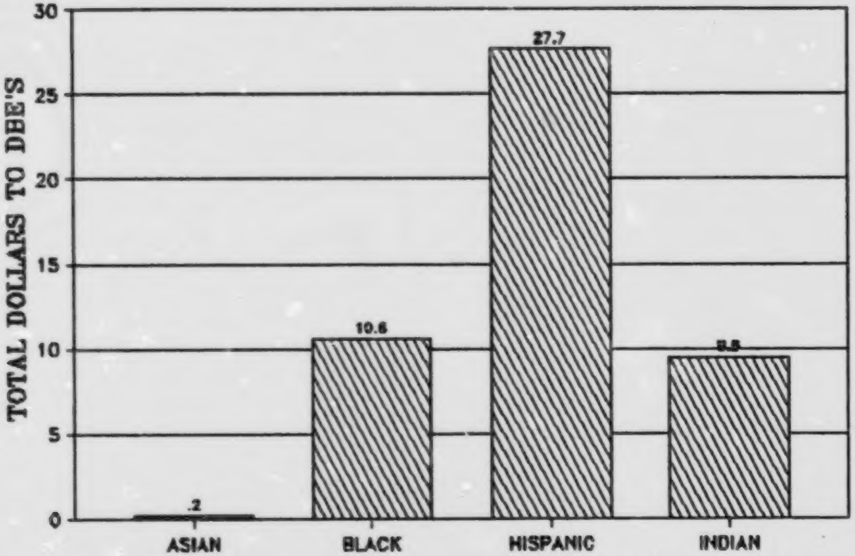
STATE CONSTRUCTION CONTRACTS ($=000,

REPRESENTING 89.7% OF ALL STATE FUNDS EXECUTED



JULY 1, 1984 - FEBRUARY 20, 1985

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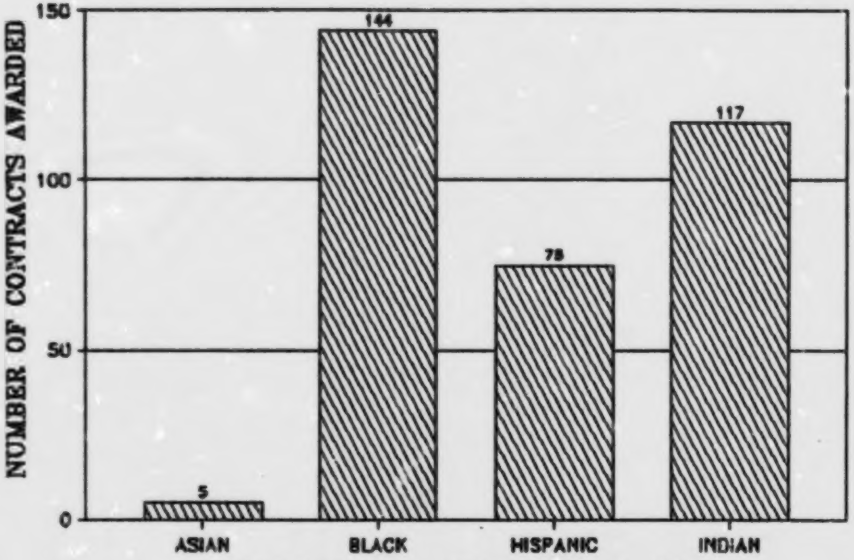
STATE CONSTR. CONTRACTS ($ = 000,000)

REPRESENTING 89.7% OF ALL STATE FUNDS AWARDED TO DATE

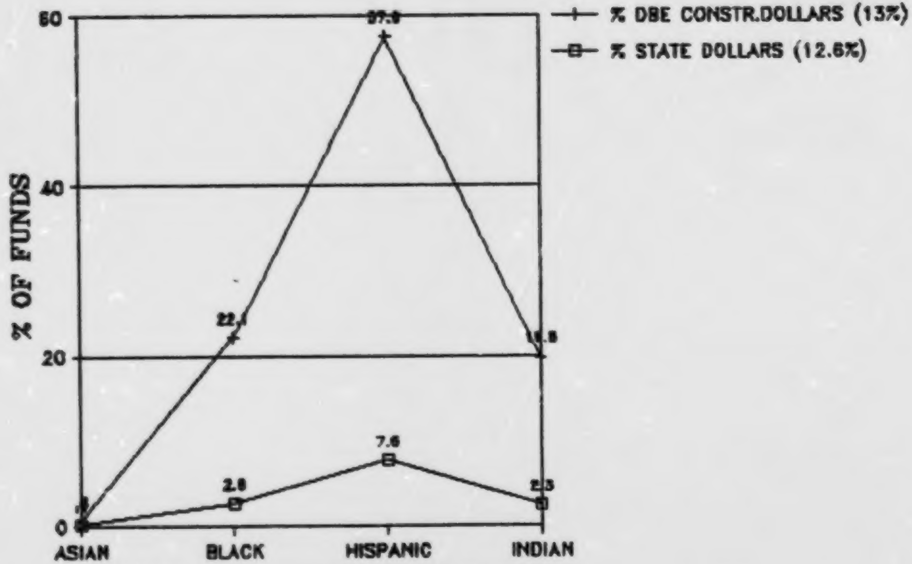


JULY 1, 1984 - FEBRUARY 20, 1985

198

STATE CONSTR. CONTRACTS ($369.8M)

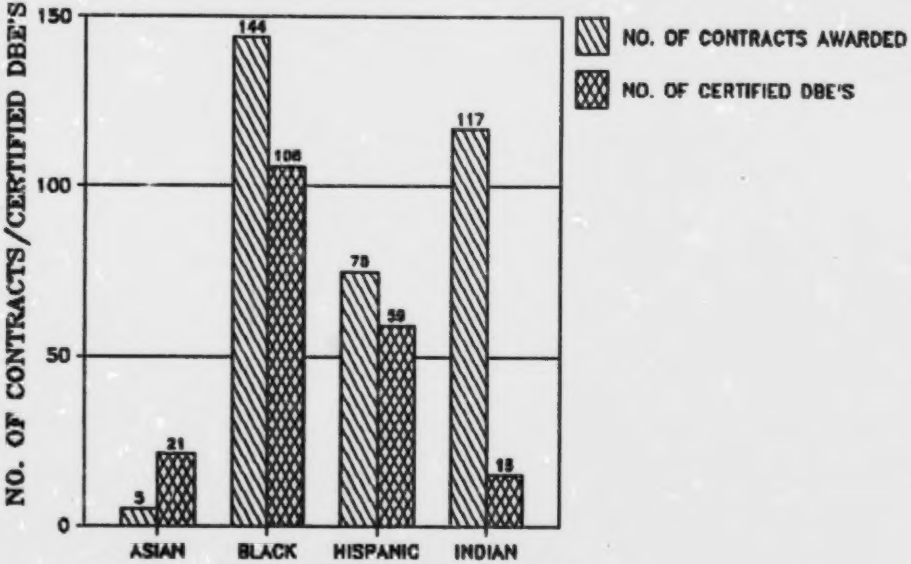
% OF FUNDS



JULY 1, 1984 - FEBRUARY 20, 1985

STATE CONSTR. CONTRACTS ($369.8M)

REPRESENTING 89.7% OF ALL STATE FUNDS AWARDED



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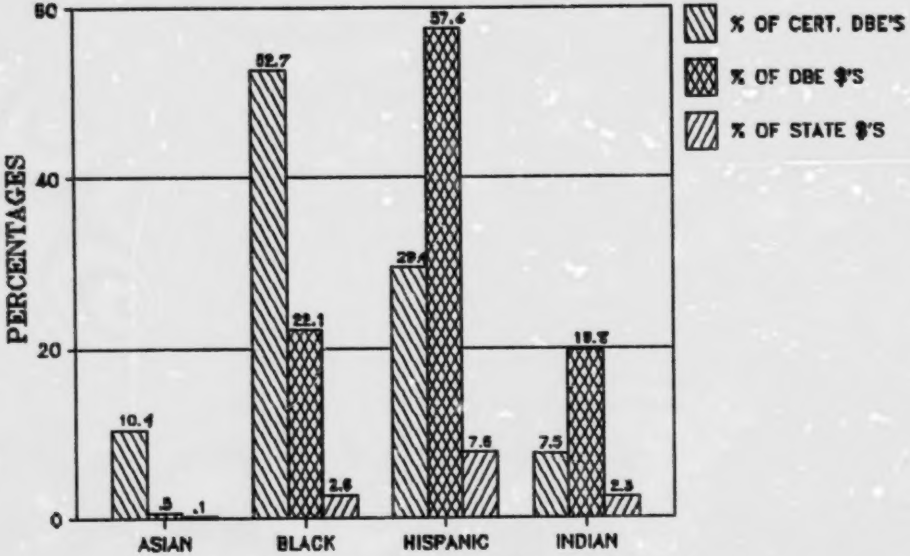
STATE CONSTR. CONTRACTS ($369.8M)

REPRESENTING 89.7% OF ALL STATE FUNDS AWARDED



JULY 1, 1984 – FEBRUARY 20, 1985

Mr. Mitchell. It's very impressive.

I'm delighted that Congressman Torres, a very effective member of this subcommittee, has been able to join us.

I recall, oh, so well, when I first came to Congress at the turn of the century, I was a junior Member and never got a chance to lead off with questions. I recall that.

So, Congressman Hayes, why don't you lead off with questions, and then Congressman Torres. After which, I have one or two questions I would like to ask.

Mr. Hayes. Thank you, Mr. Chairman.

We have been presented with a rather thick catalog here.

Mr. Gordon. Can I interject one thing?

Mr. Hayes. All right. Go ahead.

Mr. Gordon. I'm also chairman of the department's Paperwork Reduction Task Force. [Laughter.]

Mr. Hayes. One that contains, obviously, a wealth of information about Florida's program.

Did I understand you—I might have missed it. Your dollar figure, I think, was about $4 million annually. Is that what you said?

Mr. Gordon. Mr. Chairman, if I could refer you to page 3, there is a breakout of the Federal program on a 3-year basis. I guess I failed to take you through that.

If you will bear with me just a second—do you all have that chart before you?

Mr. Mitchell. Go right ahead.

Mr. Gordon. The first column is contracts executed on a monthly basis, and this is strictly the Federal program. You'll see the three Federal fiscal years, 1983, 1984, and 1985 to date.

If you look beneath that row, the next row is the cumulative contracts executed for those same periods.

For that particular column, for fiscal year 1982–83, we committed, or awarded, $268.5 million in Federal contracts. DBE's achieved $15.8 million, or 5.9 percent. That was the first year of implementation.

There were two factors that influenced the failure to achieve. First of all, while the law was passed, or signed into law, January 6, the previous quarter the State let the largest contract in State history, and that was the Sunshine Skyway Bridge.

The second is that we had not, during that year, been able to implement our program, because we wanted to make sure we had sufficient public input into the process, and therefore we conducted the eight public workshops and the single public hearing.

For the next year, fiscal year 1984, the department awarded $270.2 million, of which DBE's received $32.1 million, which represented 11.9 percent.

So far this year, up through February 20, the department has committed $99.2 million, of which DBE's received $9.6 million, or 9.7 percent.

The reason for that 9.7—it would actually be approximately 14 percent—some of the projects are under protest under our Administrative Procedures Act. Therefore, we can't award the contracts until that process is finished.

So while we have the ability to achieve that goal, while they're tied up in litigation, we can't commit those contracts. We are also taking other steps to ensure that those that we do commit will still be on that 10 percent, because the statute said at least 10 percent. We want to assure that we have something on the board that says at least 10 percent. The rest of it would continue to be in compliance once they are released from litigation.

Mr. **Hayes**. In specific terms—I'm trying to follow the chart. I noticed in February of this year—I guess that's $2.6 million, the figure you reached. Is that right?

Mr. **Gordon**. $9.6 million for DBE's?

Mr. **Hayes**. Yes. I don't see $9.6 million—oh, yes, I see it now—the cumulative.

Mr. **Gordon**. Yes, sir. The $2.6 million is how much was committed for the month of February.

Mr. **Hayes**. Yes, just for that month, but the total amount is the $9.6 million.

Mr. **Gordon**. Yes, sir.

Mr. **Hayes**. What steps has the Florida Department of Transportation taken to ensure maximum participation and utilization of the DBE's in this program?

Mr. **Gordon**. We've taken quite a few steps. We have an outreach program that was started back in December, which is to be concluded in June.

The consultant has a goal of increasing our supply by 100. We feel confident he's going to achieve that, based on the results he's achieved to date.

One of the things we are trying to do is establish relationships between or among DBE's to look at joint venturing, to look at the possibility of joint venturing among themselves or with prime contractors.

We also have that training program that we're in the process of finalizing or having submitted the final master plan. We think that is going to be the key, not for short-range results but for long-range results.

Mr. **Hayes**. Has the implementation of these measures that you've mentioned resulted in an increase in the number of DBE's and their participation in the program?

Mr. **Gordon**. Can I refer you to another chart?

If you will look at exhibit A toward the back, I have an 8-year trend line.

Mr. **Hayes**. Exhibit 8?

Mr. **Gordon**. A as in alpha. It's at the bottom of the——

Mr. **Hayes**. OK, I follow you.

Mr. **Gordon**. The first two charts, one, the bar chart, and the second, the line chart, and I think the line chart would be more indicative of the point I'm trying to make.

You'll notice on the time line it says "82–83" with asterisks. That is the time the DBE definitional change took place. As a result of that, the achievement level dropped to $21.2 million that year.

There are two things that caused that drop. The first was that WBE's were not counted as DBE's. So their percentage participation was dropped. But, more importantly, because of the certification process, we dropped from approximately 400 MBE's to approximately 180 DBE's, which significantly impacted our achievement levels in terms of actual reporting of valid, bona fide DBE participation.

But then you will notice the swing upward to $49.5 million.

Mr. Hayes. Eighty-three, eighty-four?

Mr. Gordon. Yes, sir.

Now, these are combined figures. This includes WBE's, and the only reason I included it on this chart was because the first 6 years were tracked on that.

Now, if you will go a little further, we break it back out again to show that the base year now is 1982–83.

I certainly don't want to confuse the committee, but because we had a 6-year trend line using MBE as the base, once we changed the definition, we just continued the trend line with the WBE's in there, but then we break it back out, and now we are establishing the baseline to be 1982–83.

Did that answer your question?

Mr. Hayes. I think that answered it.

Mr. Gordon. OK.

Can I give you one contrast, Mr. Chairman?

Mr. Hayes. Yes.

Mr. Gordon. As I indicated, for up to February 20, DBE's, according to the Federal program, received $9.6 million, or 9.7 percent of contracts awarded.

For the State program, DBE's for the State fiscal year beginning July 1 to February 20 received $52 million, or 12.6 percent of all funds in the State Transportation Trust Fund. Those charts are in here also.

Mr. Mitchell. Have you finished, Congressman?

Mr. Hayes. Yes, I'm through.

Mr. Mitchell. Congressman Torres?

Mr. Torres. Thank you, Mr. Chairman.

I do apologize to Mr. Gordon for being tardy. We were tied up in another committee meeting, and consequently I did miss the basic thrust of your statement, but I would concur with the chairman, as I heard him say that he felt that your testimony was a good, tight one, that he felt rather impressed by it.

I just want to ask one question.

In reading some of the statements that we had in our kit, I was following through the Hispanic experience in Florida. You mentioned just as I came here about prequalification, and perhaps I missed your comments on certification, but does the certification process adequately identify bona fide Hispanic DBE's in the Florida experience?

Mr. Gordon. Yes, sir.

We have a problem in terms of terms. We refer to certification as it relates to DBE or bona fide DBE firms. Our statutes use that same term, and that term "certification" applies to our prequalification process.

So administrators, politicians, et cetera get confused when we use those terms "certification" or "prequalification," because they're not synonymous, and, depending on your point of reference, they get confusing.

But to directly answer your question, yes, we do. In fact, when you look at some of those graphical presentations, as I indicated earlier, while Hispanics represent a lower percent of total DBE's certified, they are getting the greatest percentage of Federal dollars committed.

It's basically because more Hispanics are prequalified to do projects larger than $150,000.

Mr. Torres. You indicated there are specifics in the testimony to that effect?

Mr. Gordon. Yes, sir.

Mr. Torres. In your presentation?

Mr. Gordon. In this document.

Mr. Torres. I see.

Mr. Gordon. This monster.

Mr. Torres. Could you direct me to that, if it's possible?

Mr. Gordon. Yes, sir.

Mr. Torres. Was it under the A category?

Mr. Gordon. No, sir. It's under the C category, if you look at the one to date, from October 1—I'm sorry. Under the E category.

I apologize again. I was right the first time. D.

Mr. Torres. Is it E as in Edward?

Mr. Gordon. D as in David.

If you will look at exhibit D-14—I'm sorry, D-16—you will see that Federal contracts awarded to blacks represented $2.8 million. That awarded to Hispanics was $3.7 million.

If you will turn that page, you will see that blacks received 38 contracts, whereas Hispanics only received 23.

Now, if you will turn two exhibits over to D-19, basically that puts the number of contracts against the number of certified DBE's.

While DBE's received 38 contracts—I'm sorry—blacks got 38 contracts, they received $10.6 million—I'm sorry. They represent 106 of the 202 certified DBE's. Hispanics got 23 contracts, and they represent 59 of that base.

Now, the last chart, D-20, puts those three elements together.

Now, if you look at black and Hispanic, blacks represent 52 percent of certified DBE's, they represent 28 percent of DBE dollars, and they represent $2.8 million. That percent in that base over there, or the key, is supposed to be a dollar amount.

When you look at the bar relationship on the Hispanic side, they represent 28 percent of certified DBE's, yet they got 36 percent of the DBE dollars, amounting to $3.7 million.

Now, we don't know what that means, but we want to track it, just to see whether we are achieving relative parity.

In other words, if you're going to look at supply and demand, one of the problems we have which makes this not valid is, we don't have a capacity rating, simply because we don't require prequalification above $150,000.

When we have our goal-setting committee meet before the bid letting, they have difficulty in saying that the supply is actually there, because we don't require prequalification and therefore don't really know real capacity.

Does that answer your question?

Mr. Torres. Yes. Thank you for the explanation.

Mr. GORDON. You're welcome.

Mr. MITCHELL. Do you have additional questions, Congressman?

Mr. TORRES. No additional questions, Mr. Chairman.

Mr. MITCHELL. Thank you. I have just one or two questions.

I have a good staff, and they're on the phone all the time, calling people around the country—not harassing them, calling them to get information.

I can recall a situation when we've called Florida regarding a—I don't like the words, "disadvantaged business enterprise." I don't know why we just can't call them minorities. However, a minority firm had complained that they have not received the payment from the prime contractor.

Your operation told us that you entered an agreement with the prime, not with the sub, and therefore you don't really have a true responsibility in that area. Is that fairly accurate?

Mr. GORDON. No, sir.

While I understand what they mean by that statement, yes, in fact, our contract is with the prime, but yes, we do have a responsibility to the subcontractors. In fact, that is a concern being reviewed this year by our State legislature.

We have heard the same complaint, Mr. Chairman, and basically what we have deduced, without factual basis, is that the prime is using the money to leverage for other contracts, et cetera, and he's saying that he never received it from DOT.

When the DBE calls DOT, he finds out that we did in fact mail the payment almost a month ago, and that's why I say we have deduced that probably the prime is using that money for cash flow purposes or for leveraging for other projects.

Mr. MITCHELL. When you discover that, what do you do?

Mr. GORDON. We are now in the process of looking at our administrative requirements.

One of the things we have already done is, we don't make the final payment until we receive an affidavit from the DBE that he received his final payment for the work he has done on the project. That entire process—or nobody cuts that last check until we've received that signed affidavit by the DBE and prime.

Mr. MITCHELL. Very good.

Now, your master plan is not finished yet.

Mr. GORDON. It will be delivered on April 21.

Mr. MITCHELL. Maybe I should wait, but let me raise the question.

Florida DOT has some technical assistance funds available. Apparently those technical assistance funds have not been spent up to the present time. I understand that you have hired a consultant to best advise you as to the most effective kinds of technical assistance that should be provided.

Now, is that included in the master plan?

Mr. GORDON. Yes, sir.

Mr. MITCHELL. OK.

Mr. GORDON. I guess I failed to tell you that.

We were in the process of committing contracts when the legislature passed that profound DBE bill. The secretary was concerned. He didn't want a splintered program—a Federal contract here, a State contract there, and nowhere do they meet, while individually they may be achieving splintered program results. He wanted a master plan to make sure we saturated.

The intent of the legislature was not to provide short-term relief but to provide long-range results. So he felt that this program has got to be dynamic, has got to include all funds available, and we wanted to ensure that we knew all of the elements and how they fit one to the other—the interrelationships, which includes the bond guarantee, the on-the-job training, and classroom training.

Now, there are some contractors—in other words, in order to qualify for the bond guarantee program, you've got to pass a proficiency—I don't want to call it an exam—a mechanism, and it's to provide for the elimination of the bureaucracy.

In other words, if you are, in fact, qualified, and you know how to perform road and bridge construction contracting, you ought to be able to pass that. If you pass it, you qualify for a bond guarantee without going through the bureaucratic thing.

Mr. MITCHELL. All right. One or two more questions.

Mr. GORDON. Yes, sir.

Mr. MITCHELL. You talked about knowing the contracting business. Obviously, you include the other services from DBE's related to the Surface Transportation Act.

Mr. GORDON. Yes, sir. It's only that part that he claims he has expertise in.

Mr. MITCHELL. OK. Now, I think you cleared this up for me. Semantics—it's a troublesome area.

Mr. GORDON. Yes, sir.

Mr. MITCHELL. When I read your background data, that you counted actual contracts executed, I jumped, because fear flashed in my mind. A contract can be executed, but that might not mean payment to a DBE.

But from your testimony, I assume that—you talk about contracts executed—that actually means the dollars going into the hands of DBE's. Is that right?

Mr. GORDON. No, sir.

Mr. MITCHELL. It is not right?

Mr. GORDON. That means the contract actually was executed. In other words, when we have a bid letting, after the bid letting, then we post the award, and we don't count that either. It's when that contract is executed between the department and the prime.

Now, we have a tail end. That's on the front end, and that's the way the Federal Highway Administration requires our reporting, based on contracts executed.

On the tail end, we have a process, the affidavit/certification process, where we report actual tail-end results.

However, for the 1984-85 Federal fiscal year, we probably will not have the results of the actual achievement levels until mid-1985-86.

Mr. MITCHELL. OK. I'm happy if you're counting the actual achievement levels as meeting your 10 percent rather than the execution of a contract.

Mr. GORDON. Well, that's correct. It's execution of a contract the results of which they have not achieved at that point.

Mr. MITCHELL. OK. But I'm saying, if you execute a contract in 1983, and the final result in terms of cash payment does not come until 1984 for a DBE, you can't count that executed contract in 1983 as a part of meeting your goal.

Mr. Gordon. No, sir. We count that only from a compliance point of view, to ensure that what he committed is what he delivered on that contract, but that's not something we report in the system, if that's what—have I thoroughly confused you, Mr. Chairman?

Mr. Mitchell. Yes. Yes.

Let me walk it through again.

Mr. Gordon. OK.

Mr. Mitchell. I enter into a contract with you for $10 million in 1982.

Mr. Gordon. Yes, sir.

Mr. Mitchell. We execute the contract in 1982. As a part of that executed contract, I have Mrs. Bryant as a subcontractor for the amount of $8 million. However, she does not get that money until 1983.

Mr. Gordon. That's correct.

Mr. Mitchell. I'm saying that you can't count her money in 1982 as really meeting the goal.

Mr. Gordon. That's the way our reporting system is set up, Mr. Chairman.

Mr. Mitchell. That's wrong. I think I jumped on somebody—I didn't jump—I dialogued with somebody else about this in the last hearing. It's misleading, not because of you.

Mr. Gordon. I understand.

Mr. Mitchell. But it is very misleading if you say this contract is executed in 1983, and it's $8 million for her, but she doesn't see it until 1984. That's—we'll work on DOT on that. It's a bad procedure.

Mr. Gordon. You're talking about the Federal DOT?

Mr. Mitchell. Yes.

Mr. Gordon. Yes, sir.

Mr. Mitchell. You have to follow the orders.

Mr. Gordon. OK.

Mr. Mitchell. You heard my earlier questioning about slick front companies?

Mr. Gordon. Yes, sir.

Mr. Mitchell. One of the most despicable forms of organisms in America's economic system, front companies.

How do you handle them? I know you've got a pretty good process of attempting to prevent them from getting into the system. When one slips in, how do you handle that one?

Mr. Gordon. If we identify, for no matter what point in the process, we have provision to revoke or suspend the certification.

Mr. Mitchell. Have you used it?

Mr. Gordon. Not yet, Mr. Chairman.

Mr. Mitchell. Well, then, you have no fronts?

Mr. Gordon. No, I didn't say that.

Mr. Mitchell. Why haven't you used it?

Mr. Gordon. Well, we haven't had the identification of it. In other words, those that we have identified have been after the fact and thus were not recertified.

If we identify on a particular project that there is one, we will either conduct a compliance review or an investigation by our inspector general's office.

So far, we have not had the need to conduct that, or, put differently, the observations or suspicions have not come forward.

Mr. Mitchell. OK.

Mr. Gordon. But I don't want to suggest that the possibility does not exist, and in fact there may be some out there; I don't know.

Mr. Mitchell. Of course. Jesus had Judas. We're going to find bad eggs no matter what we do. Our job is to try to prevent them from getting in and to make sure, once they are in, to—can you use the word "retribution," that the punishment is swift, effective, and tough.

Mr. Gordon. We have the mechanism, and the process, and the authority, Mr. Chairman.

Mr. Mitchell. OK. Last, if you had to single out the one most difficult problem in implementing this program, what would it be?

Mr. Gordon. I would have to believe the one single problem we have is, of the certified DBE's that we have, while we have 200, they are concentrated in 4 or 5 main areas.

When you look at the types of specialities and the types of projects we have, we have tremendous voids in the supply side. That is the single-most problem, and the capacity level of those certified.

Mr. Mitchell. Early on, you talked about the capacity level—that you were going to look at that, and, hopefully, if you do, then those voids will diminish somewhat.

Mr. Gordon. We are hoping, through our training program, to take those that are capable of making the quick transition into higher levels of work will assist us in achieving that.

Second, those who are successful businessmen, we are going to make them aware of the opportunities in the other areas that they might want to consider adding to or converting to.

Mr. Mitchell. Mr. Gordon, Mr. Serianni, it's clear you know what you're doing.

In one of the earlier hearings last year, I acted so ugly. I really did. I told them they had no business coming here ill prepared—"You've got a sloppy program; it's sloppily administered." He didn't cry, but he wanted to hit me.

But it's clear you are running a good, tight program, and I commend you for it. I just hope that all the States would try to emulate what you are doing, not that you are perfect, but to have the answers, to have the understanding of the material you presented and to go through such a rigorous certification process.

This really goes a long way in answering those critics who make those general charges, you know, that somehow or another it's all fronts that are participating or somehow or another something else is going wrong.

Thank you. Thank you both very much.

Mr. Gordon. Thank you, Mr. Chairman.

Mr. Serianni. Thank you.

Mr. Mitchell. Our next witnesses are Dr. Charles Hudson, deputy secretary of the Louisiana Department of Transportation, and Judy Perilloux, our DBE/WBE specialist.

Thank you very much for being here. We did receive your testimony. First, we received a whole host of materials that I had no intention of wading through, not at that time, but now we have received your testimony, and we are most grateful to you for that.

You will not have to give your testimony verbatim, because we have access to it. If you will just go through and highlight only the most salient points that you would like to make with regard to your testimony.

TESTIMONY OF CHARLES HUDSON, DEPUTY SECRETARY, LOUISIANA DEPARTMENT OF TRANSPORTATION

Mr. Hudson. Thank you, Mr. Chairman and members of the committee.

Let me begin by expressing our appreciation for the opportunity to be here this morning and to offer testimony with regard to our program.

Let me bring you greetings from the Governor of the State of Louisiana and certainly from the secretary of the department of transportation.

I might just say very briefly that we are fortunate to have a very strong commitment from the Governor on this program, and we have a very strong commitment from the secretary of transportation and development.

The Governor's commitment is evidenced by his support of legislation at the State level to involve minority business or disadvantaged business enterprises and women-owned business firms in the economic opportunities afforded through DOTD. Some of the most recent legislation attests to that fact.

Secretary Graves has shown a very strong commitment in his directives, enforcement, and certainly in requirements for DBE/WBE participation in design, construction, and maintenance of highway activities in the State.

We, in administering the program, are constantly seeking to improve our methods of implementation. For example, we are looking currently at ways to assist DBE's develop, and the rationale there is that we do not think it's enough to provide opportunities for participation. We think that we ought to deliberately and purposely do something to prepare these people to effectively participate in the activities of the highway industry.

Ms. Judy Perilloux is going to give a summation of our testimony with regard to our program.

Ms. Perilloux.

TESTIMONY OF JUDY PERILLOUX, DBE/WBE SPECIALIST, LOUISIANA DEPARTMENT OF TRANSPORTATION

Ms. Perilloux. Mr. Chairman and committee members, it's a pleasure to be here. We do appreciate the opportunity to appear before you, and I wish to offer my apologies for the tardiness——

Mr. Mitchell. Maybe you want to shift gears. I'm having difficulty hearing you. Why don't you try this mike over here?

Ms. Perilloux. Am I with you now?

Mr. Mitchell. That's better.

Ms. PERILLOUX. Once again, I wish to thank you for the opportunity to appear and apologize for the tardiness of the receipt of our testimony, and I am very sorry for the unfortunate set of circumstances that led up to that.

As Dr. Hudson was telling you, we do have a very firm commitment from our secretary to implement this program. It has involved the entire department of transportation and development. All of our management and lower levels are involved in its implementation.

Currently, certification is getting a great deal of our attention. We found that it has become a learning process for us, and we have, over the last year particularly, tightened our system considerably.

First of all, what we do is actually review each application in our own Civil Rights Office to determine if it is complete and to make sure that there isn't any conflicting information with what has been presented in previous years.

Once we obtain all of the information we feel is necessary to make a proper determination on that application, we submit it to a six-member committee, of which Dr. Hudson is chairman. These are individuals who are not associated with our office, so we might have an objective review of each applicant, without any personal feelings interfering with it.

These members, as I said, are of different disciplines within the department. We have two from legal——

Mr. MITCHELL. Would you project just a little bit more?

Ms. PERILLOUX. Sir?

Mr. MITCHELL. That's right. Project just a little bit more. Maybe you ought to talk directly into your mike. You have a soft voice.

Ms. PERILLOUX. Yes, sir, I do. I've been accused of that many times.

Our six-member committee is composed of two administrative people, two from our legal section; one from budget; one from project control, which is an engineering portion of the department; and we do feel that we do have a complete review of each application as it is presented.

This, of course, is where we try to eliminate any front companies that may try to enter our system. I think, for the most part, we have eliminated it now at the certification stage.

We are finding, as I'm sure other States must also be finding, that in previous years we were not as well informed in our certifications and in applying the criteria for certification. Some may have gotten through. We are picking these up at recertification time, and they are not continuing to be certified. We are simply dropping them.

We have had one instance recently where a firm's certification was withdrawn because it was determined to be a front company. It was actually a brokerage. Not only was the certification withdrawn, but participation for the prime contractors was deleted.

This means that we had accepted a commitment from the prime for utilization of this firm to meet the contract goal requirement using this disadvantaged business. Once it was determined that it was a front company and the contractor had been aware of this, then what we decided to do was simply to tell the contractor, "That's fine. You may use this business as a subcontractor. However, you may not use it to attain your goal," and therefore the contractor has to find additional participation within each contract in order to meet his contract goal. If he does not do this, we will withhold money in like amount to the goal in the contract that has not been met.

In our general goal setting, of course we do have an overall annual goal. At this time, the goal is 10 percent of the annual funds allocated, and in order to achieve this overall annual goal of 10 percent, we do set up contract-by-contract goals in our construction contracts.

We examine each contract at the preconstruction phase, so that we can determine whether it will support subcontracting or not. There are few, very few, highly specialized contracts that will not allow for subcontracting in them, and we have no disadvantaged businesses with that capability. Therefore, in those peculiar instances, contract goals are not included in those contracts.

However, what we are doing, rather than putting a percentage goal into our construction contracts, we are putting an actual dollar value, which we determine to be 10 percent of our engineer's estimate of the job.

In Louisiana, we are lucky enough to have a lot of jobs come in under-running, which means that our 10-percent dollar figures in the contracts actually work out to be in many instances 11 or 12 percent of what the contractor actually has bid the job, and that has actually given us what the contractors like to call a cushion in our goal participation.

Now, one thing that I realize you don't like, Mr. Chairman, of course, is the way that goals are counted. Unfortunately, this is dictated to us by our lead agency, the Federal Highway Administration.

Mr. **Mitchell**. But you have the administrative leeway to have another little separate count on the side.

Ms. **Perilloux**. Oh, yes, sir, we do keep it.

Mr. **Mitchell**. OK.

Ms. **Perilloux**. There is no doubt. We do keep those separate actual dollars awarded on a monthly basis.

In order to determine whether or not we have met our goal each fiscal year, the Federal Highway Administration does keep track of the goal commitments, which of course are those which have not actually been awarded to the subcontractors as yet though the prime contracts have been executed, and, in addition, whenever a subcontract is awarded, it's deleted from the commitment side for that fiscal year. So there is no double counting here.

This is done for the purpose of making sure that the department is in compliance, because each year we have to explain why we have not met the goal if we have not, and in order to determine whether or not there are going to be any penalties to the department, the State highway agencies, they must make some type of determination at the end of each year. This is the rationale that has been given to me.

Therefore, they use the commitment plus award, and, as I said, on the side we do keep track of the actual dollars awarded each year.

Now, in order to monitor our program, as I said, we've gotten our entire department involved in this. I'm the only person, up until recently, who has been the disadvantaged business specialist for the department. As of about 1 month ago, I am very proud to announce I have two assistants, which should make this much easier as soon as they are trained.

But the massive amount of monitoring that is needed to actually assure that these disadvantaged businesses get the work and complete the work is monumental. I was astounded myself.

What we do is, first of all, have our preconstruction section set the goals in the contracts. Then, once the contract is sent out for bids and a commitment is sent in by the prime contractor to achieve his goal, I, myself, review these forms and determine whether or not the goal has been met—at least the goal commitment has been met.

The contractor must indeed meet or exceed the dollar value that's in the contract, he must use a certified disadvantaged business, and, in the case where women's goals are included, a WBE as well. The items for work must be very clearly stated so that field monitoring will be able to take place.

Now, if I do recommend approval, the contract may go through. However, as I said, I can only recommend approval and recommend disapproval. However, in no case have I ever been overruled by the department. I have recommended disapproval, and that contract has not gone through until all corrections that were necessary were made.

Once the contract is awarded, then the contractor must submit what we call a sublet request prior to commencement of work on any job of a subcontractor. This includes not only disadvantaged businesses and women businesses but other subcontractors as well. No subcontractor may commence work without department approval prior to that time.

In the review process of sublet requests, each one does cross my desk on Federal aid jobs. I review it to make sure that there is no interference with those items that have been designated for disadvantaged business participation. If there is some interference, I disapprove the sublet; it goes no further. The department, again, supports me in this. I have never had one overruled.

Once I approve a sublet request for a disadvantaged business, or a woman business, or a nondisadvantaged woman business, then, in the field it is monitored by an inspector on the job site who is an employee of the department.

Any discrepancies out in the field are immediately reported both to the construction section in our headquarters building and to the Civil Rights Office. Jointly, we make a determination—the Civil Rights Office and the construction section—on the appropriate action to take.

The project engineer in the field is authorized to shut down a job completely if anyone other than the designated disadvantaged business performs work that has been designated in the contract for that disadvantaged business.

In addition to this field monitoring, we also have the complete cooperation of our division office of Federal Highway Administration. They provide inspectors on each job site who monitor it, not on a daily basis but periodically.

If they find anything untoward out in the field, they will immediately report it to the project engineer, the Civil Rights Office, and the headquarters construction section, and immediate action is taken on that.

Now, I'm sure you'd like to hear exactly what our dollar values have been.

Mr. **Mitchell**. That's the bottom line.

Ms. **Perilloux**. That's the bottom line, yes, sir.

Now, in 1983—I'm going to give you our commitment plus award figure first. That was $19,252,428. The actual awards—the dollar volume that year that went to disadvantaged businesses—was $11,502,008.

In 1984—again, this is award and commitment—our goal base—$18,705,169. The actual awards that year were $16,092,394.

Now, this of course represents for 1983——

Mr. **Mitchell**. Wait a minute. Could we go back?

Ms. **Perilloux**. Yes, sir.

Mr. **Mitchell**. For 1984, what's your first figure—$18 million?

Ms. **Perilloux**. It's $18,705,169. That was our goal. The actual dollars were $16,092,394.

Now, what I would like to point out is this—I'd like to go back to 1980 when the original title 49, Code of Federal Regulations, part 23, came out, where we first had a regulation at the Federal level for Federal aid contracts.

This began a real effort, I think, on the part of the Congress to help us in implementing minority business enterprise participation.

The first year, 1980, we had $3.2 million actual awards; these are no commitments.

Mr. **Mitchell**. Well, that was before the act.

Ms. **Perilloux**. Yes, sir, it was, but I'd like to track something for you here. This is showing a slow and steady increase in participation, which I think has been extremely valuable to the disadvantaged businesses.

I feel that if we would have an onslaught—just a sudden, overwhelming pickup in participation, you're going to see a lot of front companies there. I know Louisiana did not have the number of disadvantaged business firms it should have had to pick up, say, a 10-percent goal. It would not have had them in 1980. We've had to develop these over the years.

We have no second- and third-generation companies in Louisiana that have maintained the smallness. These are all first-generation companies, brand new companies in most instances, and very, very few—I'd say in only maybe two instances do I have firms that are actually participating with us who have been in business for over 10 years. That's very disconcerting. They find other avenues far more attractive, like Army Corps of Engineers, Department of Energy contracts, and such.

Mr. **Mitchell**. OK.

Ms. **Perilloux**. This is just tracking—$3.2 million in 1980, $4.9 million in 1981, $9.6 million in 1982, $11.5 million in 1983, and $16 million in 1984, and this year—unfortunately, this is prior to the time that the participation for that decertified firm was deleted. This figure was $23.5 million. That figure has now been reduced to approximately—well, it's 8.4 percent, and the dollar figure would be approximately $19 million.

Mr. **Mitchell.** All right.

Ms. **Perilloux.** As you can see, that represented a fairly high participation rate, which was why we had to take such punitive action in that case.

Thank you, sir.

[Mr. Graves' prepared statement follows:]

PREPARED STATEMENT OF ROBERT G. GRAVES, SECRETARY, DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT, STATE OF LOUISIANA

Department of Transportation and Development
P. O. BOX 44245 CAPITOL STATION
BATON ROUGE, LA. 70804

Robert G. Graves
Secretary

Edwin W. Edwards
Governor

April 4, 1985

Honorable Parren J. Mitchell
Chairman
Committee on Small Business
House of Representatives
2361 Rayburn, House Office Building
Washington, D. C. 20515

Dear Mr. Mitchell:

Attached is the information requested for the Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems. Please forgive our tardy response. Your request of February 22, 1985, was forwarded to the Louisiana Department of Commerce and was not received by our department until April 3, 1985.

To provide testimony on Louisiana's implementation of Section 105(f) of the Surface Transportation Assistance Act of 1982, a representative from Louisiana will appear before the subcommittee on April 17, 1985. Dr. Charles Hudson, deputy secretary of the Louisiana Department of Transportation and Development, will appear in the stead of the Honorable Edwin W. Edwards, governor of Louisiana.

Attached is our testimony on the items listed in your letter of February 22, 1985.

Yours very truly

ROBERT G. GRAVES
SECRETARY

RGG:kde

Attachments

1. Louisiana's certification process.

A. Purpose of certification

1. The purpose of certification is to ensure that all firms deemed eligible to participate in the department's MBE program meet the standards for eligibility as set forth in 49CFR23.

2. The Louisiana Department of Transportation and Development is responsible for determining and certifying the eligibility of all firms seeking to participate as DBs and/or WBEs on federally assisted projects.

B. DOTD certification process

1. The department's certification process consists of:

a) A DB/WBE Certification Pamphlet containing explanations regarding DB/WBE eligibility and instructions on completing and furnishing the necessary information and documentation of business size, ownership and control required of a firm wishing to participate as a DB or WBE.

b) A Certification Committee composed of six (6) members appointed by the Secretary. The present committee is composed of the Deputy Secretary, Undersecretary and representatives of the Legal, Budget and Project Control Sections.

c) A List of Disadvantaged Businesses and Women Owned Business Enterprises Certified by the Louisiana Department of Transportation and Development which gives the name, address, telephone number and name of the principal contact person of each firm or joint venture certified by the department as eligible to participate as a DB or WBE.

d) Annual recertification.

2. The DB/WBE Certification Pamphlet is provided to any potentially qualified business firm seeking recognition and certification as a DB or WBE.

3. The Certification Committee meets at scheduled intervals, generally weekly, and examines and evaluates all applications for certification then pending. From information furnished by the applicant firm, the Certification Committee determines if the firm meets all of the following criteria:

a) That the firm is a small business as defined in section 3 of the Small Business Act and Appendix B of 49CFR23; and,

b) That the firm is a disadvantaged business as defined by subsection 23.62, 49CFR23, or that the firm is owned and controlled by one or more women eligible to participate pursuant to subsection 23.5, 49CFR23; and,

c) That the firm is capable of, and intends to perform a commercially useful function, defined by 49CFR23 as being one in which the firm "is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved."

4. Guidelines for use in making the determinations listed above are included in the regulation (49CFR23) and are contained in this Chapter in Part D, Guidelines for Certification.

5. The Certification Committee notifies the Civil Rights Office of its determination of each firm's certification or non-certification. In the case of an approved applicant, the Committee reports the appropriate designation (DB, WBE, or both) by which the firm is to be recognized. Where certification is denied, the committee will document the reason for such denial. The Civil Rights Office notifies the applicant firm of the department's certification action.

6. The Civil Rights Office compiles and issues each month an updated list of certified DBs and WBEs described in B.1.c, above.

7. The department requires recertification of each firm or joint venture annually. The Civil Rights Office initiates a firm's recertification by notifying the firm and providing appropriate forms and instructions within the appropriate time frame. The Certification Committee retains and performs the same responsibility and function in recertification as in initial certification.

C. Verification of eligibility

1. It is the responsibility of the applicant for certification to submit the required information in a notarized statement under penalty of perjury. It is DOTD's responsibility to certify that the applicant firm meets the eligibility standards of 49CFR23.

2. Inasmuch as DB/WBE certification is determined largely upon written and verbal information supplied by the applicant firm, the department reserves and exercises the right to verify the information furnished regarding the applicant's minority status, business size, ownership, control and operation.

3. Firms whose domicile is in a state other than Louisiana applying for certification in Louisiana are advised that the state transportation/highway agency in their home state may be contacted and asked to provide certification information on the applicant firm. Similarly, the department may contact the appropriate transportation/highway agency of another state, whenever a Louisiana-based

firm is known to have been certified by the other state. Information obtained from another state may be considered by the department in acting upon applications.

4. Some situations which may indicate that in-depth verification is warranted include:

   a) The ethnic/racial origin of the applicant firm's principal(s) is/are in question.

   b) The applicant firm was in existence for some time prior to its request for certification and was not previously recognized as a disadvantaged, minority or woman owned firm.

   c) One or more of the principal(s) of the applicant firm have been or are presently involved as principals in a non-minority or male owned firm, or a non-minority or male owned firm or individual has an interest in the applicant firm.

   d) The applicant firm claims to be a joint venture.

   e) The experience and qualifications of the principals of the applicant firm are suspected to be insufficient to reflect the required degree of control.

   f) The principals of the applicant firm have received stock as gifts or the principals have been issued stock which has never been purchased or where there has been a minimal or undocumented cash outlay on the part of the minority or female principals which is disproportionate to their interest in the applicant firm or to the amount of cash outlay from the non-minority or male interests.

g) In the case of a WBE firm, the firm's female principal(s) are closely related to the principal(s) of a prime contractor or other subcontractor in the same or related type of business.

h) Notice is provided that the firm has been denied certification or has been decertified by another state, or a third party alleges that the firm is not owned and controlled by a socially and economically disadvantaged individual(s).

i) FHWA requests verification.

D. Guidelines for certification

1. Business size

a) The Certification Committee will first determine whether an applicant firm meets the standards established by the Small Business Administration in 13 CFR Part 121. If the applicant firm does not meet the small business standards, the firm is not eligible to be considered a disadvantaged business or a woman-owned business and no further determinations need be made.

b) A firm having a current, valid 8(a) certification from SBA is automatically certified as a small business concern owned and controlled by socially and economically disadvantaged individuals. The department will still require these firms to submit a Schedule A, B, or C as appropriate along with a copy of their 8(a) certification dated no earlier than 90 days prior to application for certification.

c) Acceptable evidence of business size includes certified income statements and federal tax returns for the most recent 3 years.

2. Presumed Socially and Economically Disadvantaged Individuals

a) Members of the designated minority groups, i.e., Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and Asian Indian Americans and other persons certified by the SBA pursuant to their 8(a) program may be presumed to be both socially and economically disadvantaged if the minority status of the applicant firm is clearly established. Definitions of these groups can be found at 49CFR23.62.

b) In certifying firms owned by individuals whose race/ethnic origin is in question, the committee will apply the particular minority community recognition test to determine if the applicant has held himself out to be a member of the minority community and is so recognized by that community.

c) If the appropriate minority community necessary for determining the applicant's minority status does not exist, the applicant will be required to prove social and economic disadvantage and if successful will be certified on that basis.

d) Those wishing to qualify to participate in the DB Program as Native Americans must submit official documents to establish themselves as American Indians or Alaskan Natives.

(1) This verification could include enrollment, registration or recognition by the specific American Indian tribe, clan, nation or other group or community of American Indians, including any Alaskan Native regional or village corporation of which he or she claims to be a member.

(2) Further acceptable identification is that the individual American Indian or Alaskan native is qualified to participate in any awards or judgments rendered by a federal or state judicial body on behalf of the American Indian tribe, clan, nation, Alaska Native Regional Corporation or other legal entity of which the individual claims to be a member.

(3) Any state or federal certification or enrollment that the individual is a member of any of the foregoing groups of native Americans is also adequate proof.

(4) Any statement or testimonial of an individual, other than that of a duly appointed and recognized tribal head, must be notarized and bear the signatures, names and addresses of two witnesses.

e) Those wishing to qualify to participate in the DB Program as Hispanic Americans, Asian Pacific Americans, or Asian Indian Americans must submit official documents to establish their country of origin or ethnic origin. Additionally, proof of community recognition may be required.

f) Proof of minority status or ancestry alone is not conclusive if an individual has not maintained identification with his respective group, has not held himself or herself out to be a member of the respective minority group, and is not identified by persons in the population at large as belonging to this group. In such cases, the applicant is not presumed to be socially and economically disadvantaged and would be required to demonstrate social disadvantage on an individual basis.

g) Persons who are not members of one of the designated minority groups may request the Certification Committee to make an individual determination that they are socially and economically disadvantaged.

3. Individual determinations of social and economic disadvantage

a) Social disadvantage is evidenced by systematic exclusion, based solely upon racial, ethnic or cultural bias, from those opportunities and institutions which afford individuals the chance to improve and advance themselves. This includes the following:

(1) Evidence of educational discrimination in professional and business schools in comparison to educational opportunities available to those not considered to be members of socially disadvantaged groups.

(2) Evidence of employment discrimination suffered by members of the group in comparison to employment opportunities available to individuals not considered to be members of socially disadvantaged groups.

(3) Evidence of the kinds of businesses and business transactions in which group members are engaged in comparison to the kinds of businesses and business transactions engaged in by individuals not considered to be members of socially disadvantaged groups.

(4) Evidence of denial of access to organizations, groups, or professional societies whether in business or in school, based solely upon racial and/or ethnic considerations.

(5) Any other evidence of denial of opportunity or access to those things which would enable the individual to advance the quality of his life, available to individuals not considered to be socially disadvantaged but unavailable to group members.

b) Economic disadvantage is evidenced by an inability of the individual to compete in the system due to impaired capital and credit opportunities. Evidence includes:

(1) Statistical profile outlining the income level and standard of living enjoyed by members of the group in comparison to the income level and standard of living enjoyed by individuals not considered to be members of economically disadvantaged groups.

(2) Availability of capital and credit to group members in comparison to the availability of capital to individuals not considered to be members of economically disadvantaged groups.

(3) Availability of technical and managerial resources to group members in comparison to the technical and managerial resources available to individuals not considered to be members of economically disadvantaged groups.

(4) Any other evidence of impaired capital or credit opportunity.

4. Ownership and Control

a) Once business size and social and economic disadvantage status have been determined, ownership and control will be evaluated to ensure that firms applying for DB certification are in fact independent firms owned and controlled by one or more socially and economically disadvantaged individuals.

b) Firms applying for WBE certification will be evaluated to ensure that they are independent and are owned and controlled by women.

c) An independent firm is one that is not inextricably associated with another firm through ownership, affiliation, sharing of employees, facilities, profits and losses.

d) Factors which are reviewed pursuant to 49CFR23.53(2) include the date the business was established, adequacy of resources for the work involved, and the degree to which financial, equipment, leasing, business, and other relationships with non-minority firms vary from normal industry practice.

e) In determining control, the Certification Committee determines if the minority or female applicant is knowledgeable in all aspects of the business and independently makes the basic decisions in daily operations. Also, the minority or female applicant must demonstrate that he/she possesses the power to make independent and unilateral business decisions which guide the business. The minority person must have some experience and technical competence in the industry to which certification is sought.

f) Since Louisiana is a community property state, a wife must establish that she truly owns the minimum percentage (51%) necessary to establish eligibility. A wife would have to demonstrate that, independent of her husband's capital and equipment, she owns 51% or more of the firm.

E. Appeals by firms denied certification

1. Decisions made by the Certification Committee are final and effective immediately.

2. An applicant firm or third party which believes that a firm or joint venture has been wrongly denied certification may file an appeal with the U. S. Department of Transportation in accordance with

subsection 23.55, 49CFR23. The filing of such appeal will have no effect on the department's determination that the applicant firm is ineligible for recognition as a DB or WBE, until a final determination is made by DOT.

F. Challenge of socially and economically disadvantaged status

1. Pursuant to 49CFR23, the department is required to make the rebuttable presumption that individuals who are members of groups specifically defined in subsection 23.62 of the regulation, are socially and economically disadvantaged. In addition, the department is required to accept as socially and economically disadvantaged, any individual found to be disadvantaged by the Small Business Administration pursuant to section 8(a) of the Small Business Act.

2. Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged, if that individual is owner of a firm certified by or seeking certification by the department as a disadvantaged business (DB).

3. The procedures for filing, processing and resolving third party challenges of an individual's social and economic disadvantaged status are:

a) The challenge must be made in writing to the Certification Committee. With its letter, the challenging party must include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.

b) The Committee will determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and economically disadvantaged. If the Committee determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the Committee will so inform the challenging party in writing. This will terminate the proceeding.

c) If it is determined that there is reason to believe that the challenged party is not socially and economically disadvantaged, the Committee will notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the Committee, within a reasonable time, information sufficient to permit the Committee to evaluate his or her status as a socially and economically disadvantaged individual.

d) The Committee will evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the challenged party. To further substantiate the information submitted, the Committee may interview selected members of the minority and business community in the challenged party's location. The Committee will notify both parties of this proposed determination in writing, setting forth reasons for its proposal. The Committee will provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.

e) Following the informal hearing, the Committee will make a final determination. The Committee will inform the parties in writing of the final determination, setting forth the reasons for its decision.

f) In making the determinations called for by this section, the Committee will use the social and economic disadvantage determination criteria set forth in Section D, Part 3, above.

g) During the pendancy of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.

h) The final determination by the Department under this section may be appealed by the adversely affected party to the proceeding to: Secretary of Transportation; U.S. Department of Transportation; 400 7th Street, S.W.; Washington, D.C. 20590.

G. Effect and limits of DOTD certification

1. The department's certification of a firm as a DB or WBE attests only to the fact that every reasonable effort made by the department revealed that the particular firm met the criteria for designation as an DB or WBE insofar as business size, ownership, control, functional intent and functional potential. Certification of a firm by DOTD in no manner suggests, implies, represents or guarantees the actual or potential ability, dependability or availability of the firm to responsibly and satisfactorily commence and/or complete a particular contract.

2. Contractors and others, contemplating subcontracts or other ventures with DBs and/or WBEs are expected to use the same degree and standards of screening and selection when negotiating with these firms as customarily used in similar negotiations with others, requiring such evidence of financial and operating stability, past performance, current capability, availability etc., together with such assurances and guarantees as necessary.

H. Decertification

1. It is the responsibility of the department to "decertify", that is, to withdraw recognition and certification of a firm's DB or WBE designation upon discovery of new or additional information which proves beyond a reasonable doubt that the firm does not meet the eligibility criteria. Decertification determinations are the responsibility of the Certification Committee.

2. The Committee will take no action to decertify a firm until the affected firm has been notified in writing of the department's concerns and been provided an opportunity to respond.

3. The affected firm will be given written notice of the Committee's final decision. Such notice will advise a decertified firm of its right to appeal the decision to the U. S. Department of Transportation pursuant to subsection 23.55, 49CFR23.

I. Notice given federal authorities of firms denied certification or decertified. The name and address of each firm and its principal officials denied certification or decertified by the department, along with the basis for such action will be provided to the appropriate federal offices within ten (10) days of the action.

J. Exclusion from participation in federally assisted programs prohibited

1. Title VI of the Civil Rights Act of 1964, as amended, provides, in part, that no person in the United States shall, on the basis of race, color, sex or national origin, be excluded from participation in any program or activity receiving federal financial assistance.

2. Nothing in 49CFR23 or in this department's certification process is intended to prevent any otherwise qualified individual, firm or joint venture from competing for and/or participating in any project, program or activity. The only effect of the certification process is that any person, firm or joint venture wishing to participate as DB or WBE must be certified and contractors in fulfilling contract goals can claim credit only for utilizing certified firms. Firms which choose not to apply for certification, or firms unable to meet fully the small business and prescribed ownership and control criteria, may nevertheless bid on and participate in department projects and activities, but will not be recognized or given credit as disadvantaged or women owned business enterprises in fulfillment of contract goals.

2. **Louisiana's procedures used to insure compliance with section 105(f) regarding DBE participation.**

A. Goals - general

1. **Pursuant to 49CFR23, the department is required to establish two types of small business goals relative to its federally assisted activities:**

   a) **Overall goals for a specified period of time (e.g., one year) or for a specific project, grant, etc.; and**

   b) **Contract goals on each specific prime contract with subcontracting possibilities (opportunities), which the bidder (1) must meet or exceed, or (2) must demonstrate that he/she could not meet despite best efforts.**

2. **Goals, in addition to being a required program component prescribed by the regulation, are valuable management tools by which the department may measure its progress and the effectiveness of its MBE Program efforts.**

B. DOTD goal standards

1. **It is the department's intent to establish and maintain meaningful and effective goals which take into consideration:**

a) minimum goal levels required or recommended by law, regulation or other applicable authority, and

b) the needs, capabilities and resources of disadvantaged businesses and women owned business enterprises in the state, and

c) the opportunities for DB and WBE involvement provided by the particular types of projects and activities administered by the department, and

d) the anticipated increase and growth of DB and WBE activity resulting from new and improved policies and procedures.

2. The department's goals will be set high enough to require systematic and sustained effort toward achievement by department personnel and supportive services, the department's bidders/contractors, the DBs and WBEs, and others. At the same time, the goals set by the department will not be so optimistically and/or unrealistically high as to make them meaningless or beyond the range of credibility.

3. The department's goals insofar as possible will attempt to achieve a consistency of DB/WBE involvement (a) throughout the state rather than in a selected geographic concentration (b) throughout the year and (c) according to the availability of DBs and WBEs to respond to solicitations.

4. The assignment of contract goals, the commitments of bidders to utilize DBs and WBEs and the contractor's fulfillment of goal commitments are carefully monitored by the Civil Rights Office to assess progress toward goal achievement and, if necessary, to modify procedures and/or goal-setting methodology.

C. Annual overall goals

1. Pursuant to 49CFR23, the department establishes overall annual goals expressed as a percentage of the total federal funds expended in contracts and agreements in the coming fiscal year. The department will endeavor to expend the goal percentage in contracts and/or subcontracts awarded to disadvantaged businesses and women owned business enterprises.

2. Separate goals are established for each major category of federal funds received by the department, i.e., highway funds, aviation funds, public transit funds, railroad funds, etc. A statement of overall goals pertinent to each category of funds is forwarded to the appropriate administrator of each DOT funding agency for approval. The department proceeds on the presumption its goals are acceptable unless notified to the contrary by the appropriate administrator.

3. The department will comply with the provisions of subsections 23.64(e), 23.65 and 23.66, 49CFR23 if, relative to FHWA and UMTA funded programs subject to the regulation, the department desires to

request approval of an overall goal of less than 10% participation by disadvantaged businesses.

4. The department will set separate annual goals for disadvantaged businesses and for women owned business enterprises.

D. Contract goals and grant goals

1. The same standards, outlined in part C above, are utilized in determining an appropriate goal for each contract, grant or agreement. There are, however, minor administrative and technical variations in arriving at and expressing a goal for a construction-type contract as opposed to a grant or other types of agreements.

2. A construction-type contract is characterized by the very precise definition of the work to be done, together with a relatively predictable commencement and completion time. Also a construction-type contract contains only those matters relating to construction, progress and completion of the project. Design, engineering, administration and numerous other concerns and activities that precede actual construction, or are conducted apart from the actual project, are not included in the construction contract itself.

3. A single grant may cover such concerns as planning, design, engineering, administration and other matters and may or may not include within it, a construction-type project or contract(s). Thus, a grant, though ultimately as precise in its requirements, is

generally more diverse in content than a construction-type contract and, in many cases is less predictable as to duration, i.e., commencement and completion dates.

4. The methodologies used in arriving at and expressing contract and grant goals are as follows:

a) Construction-type contracts

(1) The Contracts Unit, under direction of the contracts and specifications engineer, analyzes each federally assisted construction project (except as noted in sub-paragraph (3) below) during the preparation of plans and specifications, evaluating each line item of required work for that item's potential to support DB/WBE subcontracting. The total results of such line item analysis, together with the known or anticipated availability of DB/WBE firms capable of performing the work, is the principal basis and source for arriving at and prescribing a DB and/or WBE goal and its dollar value.

(2) After assessing the proposed contract and its components as described, and, if it is determined that the project will support a reasonable level of subcontracting of items in which certified DB and/or WBEs have expressed interest and capability, a DB/WBE goal is prescribed for that project and specified in the Special Provisions of the contract.

(3) The contracts and specifications engineer may establish "in-house" criteria, guidelines and/or instructions on assignment of goals and goal-setting methodology pertaining to any project or category of project. Generally, no federally assisted contract is immune to consideration for assignment of a DB/WBE goal. However, where emergencies exist or where time and safety factors are of paramount concern and/or when the anticipated level of subcontractor participation does not warrant comprehensive project analysis, the contracts and specifications engineer may exempt a project or category of projects from assignment of a contract goal. Exemption of any project category shall apply only so long as the conditions warranting such exemption continue.

b) Grants

(1) Goals for grants will be established and applied to each particular grant, project, or groups of grants or projects according to the scope of the particular grant, project or groups to which a single approval is to be given by the federal agency concerned. The department will cooperate with the particular DOT agency responsible for administering and approving the grant in arriving at a mutually acceptable goal when submitting the application for the

grant. It may be mutually agreed by the department and the approving agency that separate goals and goal levels should be applied to various components within the grant rather than applying a single goal to the entire grant.

(2) To the extent feasible and as acceptable to the approving agency, the goal for a construction-type contract which is a distinct component within a grant will be determined in the same manner and by the same standards described in subparagraph 4a(1), (2), (3) above.

(3) Goals assigned to a grant or to any component of a grant prevail for the life of the grant or the life of the particular component. Progress, goal fulfillment and compliance will be measured against the provisions of the particular grant, project, group of grants or projects, or component without regard to the fiscal year (or other time period) in which it is commenced and/or completed.

c) Other forms of contracts and agreements

(1) The department will ensure that maximum opportunity is afforded DBs and WBEs to compete for and participate in other forms of contractual agreements not specifically defined in the preceding paragraphs.

(2) Where feasible, i.e., according to the nature of work or service to be obtained, goals for DB and/or WBE subcontracting will be made a provision of such agreements.

E. Public notice of goals

1. In accordance with requirements of 49CFR23, the department, upon adopting DB/WBE goals and upon any substantial revision of such goals, will publish a notice in the official journal and in such general circulation media, minority-focus media and trade organization publications as deemed effective in giving widespread notice to persons having interest in the department's DB/WBE activities.

2. The notice will inform the public that the goals and a description of how they were selected are available for inspection during normal business hours at DOTD Headquarters, Baton Rouge, for 30 days following the date of the notice and that the department will accept comments on the goals for 45 days from the date of the notice. The notice will give the address to which comments may be sent and will state that the comments are for informational purposes only.

F. DOTD required contract provisions

1. All proposals and contracts in which DB and/or WBE participation is prescribed as a condition to award of contract will contain Special Provisions to prescribe DB/WBE requirements of the contract and to prescribe the actual dollar goal (total contract dollar value to be awarded DBs and/or WBEs).

2. The proposal/contract will contain Form CS-6A Required Contract Provisions In Federal-Aid Construction Projects which, by signing of the proposal, constitutes written assurance of the bidder's commitment to meet the goals and to comply with all other requirements of the contract.

G. Subcontracting and approval to sublet

1. Notwithstanding the bidder/contractor's commitment made at time of bidding and/or award of contract, the contractor is required to request permission of the department to sublet any portion(s) of the contract, identifying the specific portion(s) or item(s) to be sublet, the agreed subcontract price and the name of the proposed subcontractor. Written approval to sublet must be obtained before any subcontractor is allowed to commence any work on the project.

2. The department reviews each subletting request to insure that the proposed subcontract is in accordance with department standards and in compliance with contract provisions. Where the particular contract contains specific goals for DB and/or WBE participation, the sublet request will be reviewed for evidence of fulfillment of the contractor's DB/WBE participation commitment on which the contract award was based.

3. In reviewing a sublet request for fulfillment of DB/WBE participation commitment, the department will note and verify, as a minimum, the following;

a) Review the request to subcontract and determine if the contractor has committed the items to be subcontracted to DB or WBE participation in the contract.

b) If the items have been committed to DB or WBE participation in the contract, the contractor must honor this commitment or document that the DB/WBE designated in the contract for the item(s) is unable to perform. Adequate documentation is a letter from the DB or WBE designated to perform the work stating the reason he can not perform. If unable to obtain such a letter from the DB/WBE, the contractor will be required to fully explain in writing, the reason the DB or WBE is deemed unable to perform, efforts made by the contractor to get the DB/WBE to perform, and other relevant facts.

c) When an DB or WBE is unable to fulfill the subcontract, the prime contractor will make every effort to replace this DB or WBE with another DB or WBE, as appropriate, capable of performing and available to perform the same designated subcontract portions(s) and will not permit the substitute DB/WBE or any other person to commence until satisfactory evidence of original DB/WBE's inability to perform and evidence of good faith to replace with another DB or WBE, as appropriate, is submitted to and approved by the department. The contractor will not perform the work with his own workforce in lieu of subcontracting, without approval of the department.

d) Should the contract have no DB/WBE goals or the items to be sublet are not committed to DB/WBE participation, the contractor's sublet request will be reviewed by the Civil Rights Office for DB/WBE reporting purposes and by Project Control for compliance with other DOTD requirements.

H. Subrecipients - contract award and administration of projects under DOTD jurisdiction

1. Subrecipients, most generally local governmental bodies, which serve as the contracting agency for projects funded by the Federal Aid Urban System, the Highway Bridge Replacement and Rehabilitation Program, and similar programs in which funds "flow-thru" the department to the local unit, are required to follow the department's contract award procedures when engaged in projects over which the department has jurisdiction. This holds true even if the subrecipient is also a direct and/or primary recipient of DOT funds under another program not subject to department scrutiny and thereby is required to have its own MBE Program pursuant to 49CFR23. The subrecipient's assignment of contract goals, its project advertising, its bid letting and contract award procedures, and its subletting procedures are subject to the department's approval whenever the project is under department jurisdiction.

2. Forms and contract documents used by the subrecipient in administration of DB/WBE contract matters in the situation(s) outlined above, shall be similar in format and content to those used by the department. Samples of such form are contained in Appendix C and may be recognized by the prefixes "BR-" (Bridge Repair/Replacement) and "US-" (Urban System).

3. Disadvantaged businesses (DBs) and women owned business enterprises (WBEs) utilized by the subrecipient in fulfillment of requirements of contracts over which the department has jurisdiction, must be DOTD-certified.

3. Louisiana's enforcement mechanisms used to insure that "Front Companies" do not participate in the program.

The department recognizes that "front companies" are inevitably lured by a program of this nature and has taken steps to insure that such companies do not participate in the department's MBE program.

Each application for certification is scrutinized for any questionable information and, where appropriate, additional information and documentation is required prior to the department's Certification Committee review. Should the application fail to provide conclusive evidence that the firm meets the criteria for certification, an in-depth investigation is authorized by the Certification Committee and conducted by the department's Audit Section.

The results of the investigation are then evaluated by the Certification Committee and a determination is made.

Each firm is reviewed at least annually to ensure continued eligibility. When a certified firm participates in a construction project, the department's project engineer is charged with the responsibility of ensuring, first, that only the designated DB perform the work committed to DB participation and, further, that the DB is in full control of the work performed.

4. The kind of efforts being made by Louisiana to alleviate any barriers that restrict DBE participation in this program.

Nearly all DB participation occurs as a subcontract and as such is not affected by the department's bonding requirements. The department's prime contractors, who are charged with fulfilling DB contract goal requirements, have in most cases waived bonding for DB subcontractors.

The only department prequalification of bidders, contractors and subcontractors is that a contractor's license is required when work valued at $50,000.00 or more is performed.

5. Louisiana's information management system for collecting and compiling data on DBE participation in this program.

As shown in response number 2 above, the department sets individual contracting goals in order to achieve overall annual goals for DB participation. The department maintains a manual record system commencing with award of each contract subject to section 105(f) on the Surface Transportation Assistance Act of 1982.

The total contract amount, federal participating percentage and federal share of the contract are recorded. Upon receipt of the prime contractor's DB Commitment, the total DB Commitment and federal share of DB Commitment is recorded.

At the time of award of subcontracts to fulfill the DB Commitment, the record is amended to include the DB subcontract award and delete the corresponding commitment.

Additionally, the department's Civil Rights Office maintains a complete file by contract to monitor compliance with the department's MBE program.

6. Other problem areas you have identified that impact on DBE participation and performance in Louisiana.

   Certification procedures need to be more standardized. The criteria for social and economic disadvantage set forth in 49CFR23 Subpart D provides too much latitude to the state in making eligibility determinations.

7. The total dollar amount of the funds appropriated by DOT to Louisiana under the STAA of 1982 for fiscal years 1983 and 1984.

1983	$231,430,534
1984	$161,232,063

8. The amount of that total that Louisiana has used to provide contracting opportunities for DBEs for fiscal years 1983 and 1984.

	GOAL BASE	ACTUAL AWARDS
1983	$19,252,428	$11,502,008
1984	$18,705,169	$16,092,394

Mr. **Mitchell**. Thank you very much.

I'm going to ask Congressman Torres to lead off with questions. I just want to make one observation.

I want to commend you for setting your goals contract-by-contract. You're one of the few States that does that, and it makes good sense. You can't throw everything in one pot at the very end and expect to meet your goals, but if you do it contract by contract, you almost guarantee that you'll meet them. I commend you.

Ms. **Perilloux**. Thank you, sir.

Mr. **Mitchell**. Congressman Torres?

Mr. **Torres**. Thank you, Mr. Chairman.

I would echo the chairman's comments, too, about your goal-meeting program.

While you, in part, did answer the question I had about how Louisiana's DOT Program addresses program abuse, and particularly use of fronts, I'd like to please have you relate to me how you go about the certification procedure specifically.

I'm not sure whether you were talking about that when you were talking earlier about your personal approval, and you mentioned field inspection, et cetera, et cetera.

But I wanted to know specifically how many people are responsible for certification within your program, and perhaps the second part of that question would be, what kind of investigation is made by Louisiana's Department of Transportation to determine a firm's eligibility.

Could you answer those two for me?

Ms. **Perilloux**. Yes, sir.

First of all, we have two levels of certification. The first is simply a review process to make sure that all information necessary is available to our six-member committee to make a determination.

We have purposely removed all of the Civil Rights Office personnel from making a determination, because we feel that we are too subjective. We meet with the people first-hand, we form our personal judgments, and that does color our opinion.

Therefore, we send it on to a six-member committee of different disciplines within the department so that they may make a determination on the firm's eligibility.

Now, what we do when an application is received is, first of all, review for completeness, make sure that everything is there to make a proper determination.

If we feel that a proper determination cannot be made, we can advise the committee as such and advise them that the proper course of action might be to request an indepth investigation in the field. In this, we have our audit section, which goes out into the field, onsite, to interview the company.

As you can imagine, in the case of brand new firms which have never performed any work, this is extremely difficult. All that we can do is wait until they do obtain work if they are otherwise certifiable and then immediately go out and check these firms. In some cases, we have done so.

In most cases, however, the firm has been in business for at least some period of time, and of course we examine articles, the bylaws, minutes of board meetings, the present board of directors.

We examine to see if there is any connection with other companies that might jeopardize the independence of this firm, and we examine the principal's capabilities. His resume should indicate educational background, prior construction, or other consulting service experience. All of this is taken as a whole in determining the firm's eligibility.

As for the total number of people involved in certification, those who actually make the determination are a six-member committee. In my office where the review of the application takes place initially, we now have three people involved in that, including myself and two trainees.

Mr. TORRES. OK.

To what degree, if you can tell me, or what percentage of DBE's are from other States?

Ms. PERILLOUX. We have a great deal of that, and in those instances, sir, what we do is, first, we try to phone the other State, get information that they may have.

However, one of the problems we have noted in this program is that, although certification is addressed in the regulation itself—(49 CFR 23) and the Surface Transportation Act amended it to subpart (d)—we find that our regional guidelines from the Federal Highway Administration guide us in making determinations, and we don't feel that that is consistent across the Nation.

Therefore, we are extremely hesitant to accept another State's certification without making our own investigation of the company.

However, when there is some highly questionable information submitted, we do phone the other highway agency and ask for as much information as it is possible for them to give us.

Because of our budgetary constraints, it makes it virtually impossible for our audit section to go out and conduct an indepth audit out of State.

Mr. TORRES. Thank you, Ms. Perilloux, for your very concise answers.

Mr. Chairman, I have no further questions.

Mr. HUDSON. May I just comment briefly? In addition to what she has said, we are constantly looking for ways of improving what we're doing, and, of course, as evidence of that, we have just put into effect a new certification procedure—an update, I should say, over what we were doing, and we think it's much more comprehensive, it's much more in detail, and it will assist us, we think, greatly in identifying only those companies or firms which are eligible for participation in the program.

Mr. MITCHELL. Thank you.

As usual, I have some questions and some comments.

I am especially worried over this perennial, ongoing problem that you combine actual awards with future commitments.

I don't care how hard you try. If that's the figure that's reported, it's always going to be an inflated figure. That's not your problem; it's ours vis-a-vis the Department of Transportation, but I am glad that you keep a separate account which would present a realistic figure rather than an inflated figure.

Program management. I have to be careful how I say this. Do you have program management centers?

Ms. PERILLOUX. Yes, sir, we do. There is a program management center located in New Orleans; it's Tucker & Associates; and we do utilize that for bonding and loan packaging purposes.

However, our department also has—I'm sorry, I neglected to mention this earlier—we also have our own supportive services consultant. We are right now in between contracts, and what we do in the interim is to utilize minority business development agencies who are under contract to the Department of Commerce within the State to provide services to our firms.

Mr. MITCHELL. Now, this external program management center located in New Orleans—well, I say external; you know in what sense. Is that operation solely and exclusively for the benefit of your program?

Ms. PERILLOUX. No, sir.

Mr. MITCHELL. Or do they preform other tasks across the board?

Ms. PERILLOUX. Well, the program management center in New Orleans—are you talking of Tucker & Associates who is under Department of Transportation contract?

Mr. MITCHELL. Right.

Ms. PERILLOUX. OK. Well, they do assist us, but as I understand it, they have a two State territory to cover.

Mr. MITCHELL. How many people?

Ms. PERILLOUX. Oh, that would be hard to judge. I believe they also cover Texas, and I'm unaware of how many are in Texas.

Mr. MITCHELL. Personnel.

Ms. PERILLOUX. Oh, personnel in the office—I'm sorry, sir. As far as I know, there are three.

Mr. MITCHELL. To cover your State.

Ms. PERILLOUX. Yes, sir.

Mr. MITCHELL. And what other States?

Ms. PERILLOUX. I think Texas as well. I have very little contact with Tucker & Associates in this. I primarily use the minority business development agencies, because they are so much more conveniently located to the disadvantaged businesses throughout the State.

Mr. MITCHELL. Is this outfit effective?

Ms. PERILLOUX. Sir?

Mr. MITCHELL. Is the outfit effective?

Ms. PERILLOUX. Tucker & Associates?

Mr. MITCHELL. Yes—in helping you, or is it like an appendix?

Ms. PERILLOUX. Well, it helps me in that I need the bonding and loan packaging assistance. My firms really need that. Oh, pardon me. I shouldn't use the possessive term, I suppose, but that's the way I feel about it. We do have a personal commitment to this program.

Mr. MITCHELL. And they primarily provide loan packaging assistance to you?

Ms. PERILLOUX. Yes, sir. Loan packaging and bonding assistance.

Mr. MITCHELL. And you have another consultant firm, Bruno and Tervalon?

Ms. PERILLOUX. Yes, sir; their contract has expired as of the end of February, and I'm between supportive service consultants right now. I'm trying to get a new contract awarded.

Mr. MITCHELL. Was their performance evaluated?

Ms. **Perilloux**. Yes, sir; I felt that they did a satisfactory job on that.

Mr. **Mitchell**. Could you tell me how many DBE's benefited from their services?

Ms. **Perilloux**. Yes, sir; this is a guestimate now. Approximately 50. This would be viable firms.

Now, of course, there were others that there was cursory contact with—assistance, and certification, maybe some management expertise—but the actual participating firms that they went into the field to assist, who had obtained projects, were approximately 50.

Mr. **Mitchell**. And what was the dollar value of that contract?

Ms. **Perilloux**. The dollar value of theirs was $87,200. It covered a 7-month period of time.

Mr. **Mitchell**. We may be missing something, but I have not, to the best of my knowledge, gotten any complaints from disadvantaged business enterprises in Louisiana with regard to not receiving their payment.

Ms. **Perilloux**. Oh, we have had two instances, sir. I will be honest with you.

Mr. **Mitchell**. I have not received them, and if you have only two, that's pretty good.

Ms. **Perilloux**. Well, we've cleared the problems there.

Mr. **Mitchell**. OK. Now, you got some bad eggs early on in the game. They were certified, and they were later decertified when you discovered that they were not bona fide companies.

Ms. **Perilloux**. Yes, sir; that's correct.

Mr. **Mitchell**. I worry about that. What happened to them after that? Were they punished in any way?

Ms. **Perilloux**. Not that I know of, other than the fact that they had been decertified. In Louisiana, that is almost tantamount to denying them work. I hate to put it in such blunt——

Mr. **Mitchell**. That's debarment?

Ms. **Perilloux**. No, sir, it's not debarment. However, the constraints on the prime contractors are such, they must achieve that 10-percent goal, and there are very, very few other subcontractors—noncertified subcontractors. They have been hurt, though not in any legal manner.

Mr. **Mitchell**. This is primarily for the benefit of the listening audience and the general audience, with all this hue and cry about front companies. What is your percentage estimate as to front companies in Louisiana?

Ms. **Perilloux**. I'm glad I didn't have to answer this question last year. I would say maybe 1 to 2 percent. I don't think it's more than that.

Mr. **Mitchell**. That's roughly what our estimate was, based on data and reports that we have received.

I had one other question, and I jotted it down someplace—one other comment about those guys who got in who were not good guys—the bad companies who were certified and later decertified.

You know, I feel so strongly on this, I want them to go to jail, too, because they got in, and they reaped some benefits, and it seems to me they violated State law at least, or certainly they violated Federal law.

The general Federal law says, if you make a false statement to the Government, it's prosecutable. Do you have a similar kind of law in the State of Louisiana?

Mr. HUDSON. No; we don't. At present we do not have legislation that would deal directly with these kinds of firms.

Mr. MITCHELL. Are you sure?

Ms. PERILLOUX. Well, sir; in the instance that I was talking about, they are being pursued at the Federal level.

Mr. MITCHELL. Yes; but almost every State has a law governing the general area of making false statements to a State government.

Mr. HUDSON. Let me tell you one of the things that has happened.

Mr. MITCHELL. Wait a minute. Before you do, there's no such law in Louisiana?

Mr. HUDSON. Let me maybe comment on that. We do have legislation, Act 715, which went into effect under the 1983 legislature, and we have Act 653, which does provide some conditions or punishment for companies of that type.

However, there's a slight technicality in Louisiana in that the department of transportation and development operates separately under a different code from all of the others, and somehow this legislation was not all-inclusive to include DOT.

So, right now, in fact, we are at this time seeking an opinion to determine to what extent, if at all, this legislation applies to DOT. I think it may have been an oversight. In fact, some of the legislators indicated just last week that if it is not covered, if it does not apply, then corrective legislation will be on the agenda—will be introduced in this session of legislature to correct it.

So, in a sense, we do have it, and yet we're not——

Mr. MITCHELL. That's incredible. That is just incredible. I just assumed that every State had general public law, and if DOT is a part of the State, then their general public law would apply.

Well, are you going to correct it?

Mr. HUDSON. Yes.

Mr. MITCHELL. You don't want me coming down there lying to you, and getting a contract, and making my money, and then when you catch me, I just laugh at you and say, "You caught me, but I've got the money." That's an incredible situation.

Congressman Hayes.

Mr. HAYES. In fairness, I haven't been here; I've been running in and out, but this line of questioning that has been directed by our chairman does make me have to raise one little question.

I have noticed that the Governor of the State of Louisiana has been getting an awful lot of publicity for some of his alleged dealings. I wonder if there are any front companies that might be operating under this program at all. You haven't had any problems in this area, have you?

Mr. HUDSON. Let me respond to that. To my knowledge, there has been absolutely none. In fact, I do not know of a case where we have had political—if you would call it that—influence from anyone, including the Governor, the legislators, or anyone else, as a public official.

It is true, we do know, that from time—we have had occasions where a firm may be denied certification, and, of course, a natural and immediate response—reaction from the company or from the firm may be to inquire—to ask someone to inquire if they have been properly denied certification.

We recognize this. We do not interpret this as any degree of political influence, simply a matter of inquiring, and we've had one or two cases like that, but to trace any action, any behavior or conduct, to political influence, we have not recognized that.

Mr. HAYES. Thank you.

No further questions, Mr. Chairman.

Mr. MITCHELL. Thank you both.

As was true of the other witnesses, I have additional questions. I'll give them to you, and I'd like to get a reply in 10 days.

Ms. PERILLOUX. Mr. Mitchell, I'd like to add one thing, if I may. In the case of that decertified firm, they were penalized in the pocketbook. Unfortunately, this was a firm that had been used, and they netted out a loss in their work.

Mr. MITCHELL. What did you sock them with? How much money?

Ms. PERILLOUX. Well, we didn't sock them. I'm afraid they did it to themselves. It was $6,000 last count on one job alone. I have no idea how much it's going to amount to on others. This is a personal loss to the disadvantaged business firm.

Mr. MITCHELL. To the disadvantaged business firm or front firm?

Ms. PERILLOUX. That's more like it; yes, sir.

Mr. MITCHELL. Personal loss?

Ms. PERILLOUX. Yes, sir.

Mr. MITCHELL. Good. Good.

Ms. PERILLOUX. I thought that would give you some satisfaction.

Mr. MITCHELL. Yes. I like that. Thank you very much.

Ms. PERILLOUX. Thank you, sir; we do appreciate the opportunity you've given us.

Mr. MITCHELL. Our next witnesses are from the Oklahoma Department of Transportation, Bill Hartronft, chief engineer; and Bernice Price, affirmative action officer for contract administration.

Thank you both for taking the time to be with us. Also, thank you for having provided us with a very, very comprehensive statement of testimony and background.

Therefore, you don't have to read your entire statement, since you did submit it in a timely fashion, and it's very comprehensive. We would appreciate it if you would give us the salient, most important points of your testimony. Afterward, we'll ask any questions we might have.

TESTIMONY OF BILL HARTRONFT, CHIEF ENGINEER, OKLAHOMA DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY BERNICE PRICE, AFFIRMATIVE ACTION OFFICER FOR CONTRACT ADMINISTRATION

Mr. HARTRONFT. Mr. Chairman, we appreciate the opportunity to appear before the subcommittee representing Governor Nigh and Transportation Director Bradley.

Mr. MITCHELL. May I interrupt you for just a moment?

Mr. HARTRONFT. Yes, sir.

Mr. MITCHELL. Your Governor was one of the first of six or eight Governors who held a press conference and announced his commitment to meeting the goals under the law. I would be remiss if I did not indicate that. I was at that meeting with him, and I thought that was a very commendable action for him to have taken.

Mr. HARTRONFT. Thank you, sir.

He not only had a press conference; he had a personal meeting with the members of the Associated General Contractors and made it perfectly clear to them that he expected their full cooperation in this program, and their response has been very enlightening.

Mr. MITCHELL. All right.

Mr. HARTRONFT. The chairman asked that we address certain points in his letter of February 22. With regard to the certification requirements, we, as most other States, require the schedule A or schedule B that has been provided through, I believe, OMB, which gives the firm's organization, experience, and financial capabilities. From this, we make an initial determination as to the firm's small business status and also the eligibility as a minority or female business enterprise.

Of course, the information must present that the company is owned and controlled by—I will restrict my remarks to the minority or disadvantaged business—it must be owned and controlled by the minority.

Certifications are issued by the department annually. They must be renewed each year. If there has been no change in the status of the company, we merely require a statement from the company to that effect.

When the ownership and control is questionable, the department will make an onsite audit of the organization to ascertain whether the actual daily operations and the actual ownership of the company is as presented in the application. Pending the results of the audit, the firm may or may not be certified to do business as a DBE.

In the event that a company is certified as a DBE and their status is questionable by a third party, we do provide a challenge procedure. This procedure follows the guidelines set up by the Federal Highway Administration.

Upon denial or decertification under the challenge procedure, the Federal Highway Administration is notified.

With compliance with the section 105(f) regarding the participation of the DBE's, I am very cognizant at this point of the chairman's and, I'm sure, the rest of the subcommittee's concern with the reporting procedures that do not reflect the actual payment to the prime and to the subcontractor on a monthly or annual basis.

However, we do report our contracts and commitments in compliance with the Federal Highway Administration guidelines.

Currently, the goals established for the State of Oklahoma by the Federal Highway Administration are 10 percent for the disadvantaged business and 3 percent for the women's business enterprise.

We set goals separately on each of our Federal aid construction contracts. The amount set by the department is depending upon the type of construction, the geographical location, and the anticipated availability of disadvantaged businesses to participate in that particular type of construction.

As the contracts are bid, we require that the contractor submit the name, the type of work, and the dollar amount and percentage that the DBE's will participate in that particular contract. This information may come in at the time of the bid opening, or it may come in within 7 days but must be provided prior to award of the contract.

If the contract is deemed nonresponsive because of lack of meeting the goal and a second or third low bidder has been able to meet that goal and is within a reasonable dollar amount, the second or third bidder may be awarded the contract. The other contracts then are considered as nonresponsive.

As far as the enforcement and review mechanism is concerned, the major portion of this is carried out in the field by the project managers, who are members of the Department of Transportation.

They report generally at a 40- or 60-percent project completion of the amount of the contract completed and the amount of the subcontracts completed.

Another report is made to the construction engineer, through the construction engineer to the disadvantaged business liaison, Ms. Price, at the completion of the project.

At any time during the project that the project manager feels that the goals are not being accomplished as they should be during the course of the contract, then he may require that the contractor provide a schedule of DBE participation and work accomplishment so that it can be tracked at a closer level.

With regard to front companies, we have, of course, perceived some at the application stage, unquestionably. These have been ferreted out through liaison with other minority organizations within the State, such as the Opportunities for Indians in Oklahoma, the Business Development Centers, and other minority organizations that participate.

I don't recall having decertified a company because of having presented an intentional front application. We have had some that we've rejected because they have not been able to actually show us that they were minority. We've had trouble establishing Indian heritage according to the guidelines that are set out.

Initially, we had a flood of applications along this line, and truly some of them were of Indian heritage, but the actual documentation and proof of that was just not forthcoming. So those applications have been rejected.

We have tried to alleviate some of the barriers restricting DBE participation through the effective use of supportive service contracts. These contractors have afforded workshops; counseling in the areas of bonding, finance, bid preparation, plan interpretation, and prequalification. The workshops, through the supportive service effort, have been supplemented by the department and by participation of the Associated General Contractors.

The major problems impacting the minority participation have been those of bonding, and finance, and, to some extent, experience. To overcome this, we have currently engaged a minority business consultant to set up and implement guidelines for a training program utilizing the mentor-protege concept. We have not implemented this program yet, but we have received a draft proposal from the consultant.

With regard to the monetary participation—and, here again, this is reported on the contract award and commitment basis——

Mr. MITCHELL. You keep a little separate set of figures?

Mr. HARTRONFT. We have not; no, sir.

Mr. MITCHELL. Please do so.

Mr. HARTRONFT. Yes, sir.

I would point out to the chairman and subcommittee that some of the funds reported in our presentation here on the 1983 fiscal year were actually 1982 funds that were apportioned and carried over. This is a process that continues in that the apportioned funds are available for use for, I believe, a 30-month period. They must be obligated within that period of time.

In 1983, the apportionment was $162,924,000-plus. Of those, $105,687,000-plus were contracted. Of the $105,687,000, $12,726,000 were committed either as prime or subcontracts to minority firms.

In 1984, the apportionment was $163,835,000. The actual amount contracted was $123,580,000-plus, and, of that, $16,300,000-plus was awarded as prime or subcontracts to minority firms.

This has been a summary of our program. We are pleased to have had the opportunity to present it, and, of course, we're available for questions.

[Mr. Hartronft's prepared statement, with attachments, follows:]

PREPARED STATEMENT OF BILL HARTRONFT, CHIEF ENGINEER, OKLAHOMA DEPARTMENT OF TRANSPORTATION

In response to the Surface Transportation Assistance Act of 1982, Section 105(f), the Oklahoma Department of Transportation reinforced its Disadvantaged Business Enterprise (DBE) and Women's Business Enterprise (WBE) programs to strengthen the participation, in particular of the DBEs.

This testimony will follow the numbered items in Chairman Mitchell's letter of February 22, 1985 to Governor George Nigh.

Item 1. concerns the certification process. Certification requires that the applicant firms submit a completed questionnaire regarding the firm's organization, experience and financial capabilities. The purpose of this questionnaire is to make an initial determination of the small business status and minority or female eligibility.

In the event that the financial portion of the application indicates 80 percent or more dollar volume as allowed by the Small Business Administration, the Department will examine the financial records of the preceding three years to ascertain the firm's qualification. The application must also provide information indicating not less than 51 percent of the firm is owned and controlled by socially and economically disadvantaged persons. Under the guidelines provided by the Federal Highway Administration, if the firm is owned and controlled by a minority and qualifies under SBA guidelines then those owners are presumed to be socially and economically disadvantaged. However, their status may be challenged by a third party.

Certifications issued by the Oklahoma Department of Transportation are required to be renewed each January. At that time it is only necessary that the qualified firms indicate to the Department that no change in status has occurred, or indicate what change may have occurred. The Department does acknowledge eligibility status of out of state firms when certified by the resident state highway agency. When ownership and control is questionable, the Department makes on-site audits of the suspect firm. Depending on the results of audit, the firm may or may not be certified by the Department.

The challenge procedure follows the guidelines set out by the Federal Highway Administration allowing the third party challenge and providing a hearing process to make final determination. In the event that a previously certified firm evolves to a position where they do not meet all the eligibility standards the Department will notify the firm and follow the challenge procedure as set up in the Disadvantaged Business Enterprise Program. Upon denial or decertification, the Department will advise the Federal Highway Administration of the action.

Item 2. concerns the compliance of Section 105(f) regarding Disadvantaged Business Enterprise participation. A percentage goal for each contract is established by the Department. These goals may vary depending on the type of work, location and the estimated availability of minority contractors. These individual goals are monitored in order to assure achievement of the annual goals of the Department. Currently the goals established by the Federal Highway Administration for Oklahoma are ten percent Minority Business Enterprise and three percent Women's Business Enterprise.

These goals are stated separately in the individual projects. The Department requires that the DBE contractors be named by the prime contractor prior to contract award with the indications of the dollar amount and percentage of contract to be accomplished by DBE subcontractors, in order for the proposals to be considered. Bidders who are unable to accomplish the goals at time of submitting their bid are required to demonstrate reasonable affirmative effort prior to contract award. In the event that this affirmative effort cannot be demonstrated, the contract may be awarded to other than the low bidder by deeming the low bidder nonresponsive.

Our program outlines seven major steps which demonstrate affirmative effort. Those being attendance at a pre-bid meeting, providing written notification to at least four DBEs prior to the bid opening, a statement of effort to select portions of work to be performed by DBEs, indicated effort to negotiate for specific subbids, reason for rejection of subcontractors as unqualified, efforts to assist the DBEs in obtaining bonding or insurance as required and whether the contractor has effectively used community organizations to obtain qualified DBE subcontractors.

Item 3. involves enforcement mechanisms to insure front companies do not participate in the program. Any indication of a front company operation will precipitate a thorough on-site audit of the company's organization and operation.

Item 4. concerns efforts to alleviate barriers restricting DBE participation. Since the implementation of the MBE program in 1980, the Oklahoma Department of Transportation has effectively used Supportive Services contracts to further minority participation. These contracts have afforded workshops and counseling in the areas of bonding, finances, bid preparation and prequalification. The workshops have been conducted in conjunction with private consultants, the Oklahoma Department of Transportation and Associated General Contractors.

Item 5. requested information of the management system for collecting and compiling data on DBE participation. Subsequent to the awarding of the contract, the Department's Project Manager in the field reports progressively, generally at the 40 percent to 60 percent completion stage, to the State Construction Engineer and the DBE Liaison Officer, of subcontract work accomplished by the DBE subcontractors. Another report is made at the completion of the contract.

If, during the progress of the contractor the Project Manager senses the lack of participation as scheduled, the contractor is informed, as well as the Construction Engineer. At that point the contractor is required to submit the anticipated work schedule for the DBE subcontractor in order to meet the project goal. When the contractor fails to meet the project goal he may assume the liability of increasing the goal on another current contract.

Item 6. The major problems impacting the DBE participation and performance in Oklahoma are those of bonding and financing and to some extent a hesitancy of the prime contractor to use firms without an adequate track record. In order to overcome those problems we have engaged a minority consultant to set up and to implement guidelines for a training program utilizing the mentor-protege concept.

Item 7. concerns the funds anticipated under STAA 1982. The FY 1983 anticipation was $162,924,891.00. For FY 1984 the anticipation was $163,835,987.00. Of those amounts $105,687,600.00 was contracted in FY 1983 and $123,580,198.00 in FY 1984.

Item 8. Of the amounts contracted in FY 1983, $12,726,056.00 was awarded as either prime or subcontract to minority firms. The prime and subcontract amount to DBEs in FY 1984 was $16,300,155.00.

The preceding information has been provided to the Subcommittee for their information and consideration, and answers to questions from the Subcommittee will be provided, if possible.

Oklahoma Department of Transportation

DISADVANTAGED BUSINESS ENTERPRISE AND WOMEN'S BUSINESS ENTERPRISE PROGRAMS

APRIL, 1985

POLICY STATEMENT

The Oklahoma Department of Transportation its contractors, and subcontractors, counties and cities which are recipients of Federal-aid funds agree to ensure that disadvantaged businesses and women's business enterprises have the maximum opportunity to participate in the performance of contracts and subcontracts in highway construction. In this regard, the Oklahoma Department of Transportation, all contractors and subcontractors will take all reasonable steps in accordance with 49 CFR 23 to ensure that disadvantaged businesses and women's business enterprises have the maximum opportunity to compete for and perform contracts.

Signed: ______________________
V. O. Bradley
Acting Director

DISADVANTAGED BUSINESS AND WOMEN'S BUSINESS ENTERPRISE PROGRAMS
OKLAHOMA DEPARTMENT OF TRANSPORTATION
APRIL, 1985

I. POLICY STATEMENT. The Department's policy statement shall be included in all agreements with contractors, subcontractors, cities and counties and recipients of Federal-aid funds. This policy will be circulated within the Department and to minority, female and non minority communities and business organizations.

II. LIAISON OFFICER. Mr. B. C. Hartronft, Chief Engineer, is hereby designated Liaison Officer for DBE/WBE programs.

The Liaison Officer is charged with the responsibility of overall coordination of the program, certification and verification reviews and the required reporting. Staffing requirements for administration of the program will be met by utilizing present personnel assigned to the Proposals and Contracts Division and the Chief Engineer's Office. It shall be the primary responsibility of the Chief Engineer's Office to provide certification and verification reviews. The primary responsibility of the Proposals and Contracts Division is to make available copies of the Plans, Specifications, Contracting Opportunities, and other information relative to construction projects. These on-site reviews shall be conducted by personal interview and may use the Regional Certification Guidelines and all appropriate federal regulations as a basis for certification. In addition, a consultant may be used to assist disadvantaged businesses and/or women's business enterprises to provide assistance in the preparation of bidding and estimating materials; financial capabilities papers and/or ODOT's prequalification process.

III. ACTIVITIES TO ENSURE DBE/WBE PARTICIPATION. The following activities will be accomplished in order to ensure disadvantaged business and women's business enterprises (DBs and WBEs) are availed of every opportunity to compete:

Solicitation for bids will be advertised not less than 20 days prior to the time for opening of the bids. As provided in the advertisement, bids may be received by registered mail or by delivery to the Department deposit box located in the Department of Transportation Building, 200 NE 21, Oklahoma City, OK within one-half hour prior to the time published for opening of bids. Project quantities and specifications will be available not later than the time of solicitation of bids. When the purchase of materials is solicited, schedules of delivery will be stated when possible.

Assistance will be provided to DBE/WBEs through the Department's DBE/WBE Supportive Service efforts, as well as through direct assistance from the DBE/WBE staff on an individual basis for providing direction in obtaining bonding and financing information and assistance on prequalification subcontractor information. Where feasible, seminars concerning the above elements will be conducted under the Department's sponsorship. These seminar settings will be used to further explain implications of the Surface Transportation Assistance Act of 1982, and to implement changes.

As project information and Commission approval for lettings become available, this information will be published in major newspapers and local minority newspapers within the state and in regional contracting magazines. These publications will be made as far in advance of the bid opening as possible. This information, as well as plans and sample proposals will be furnished directly to DBE/WBE development organizations (See Appendix A-1).

IV. MINORITY AND WOMEN-OWNED BANKS. The Department will continue its current program through the State Treasurer's office of using minority and women-owned banks. Prime contractors will be made aware of these banks and their services through listings in the DBE/WBE Confirmed List.

V. DBE/WBE DIRECTORY. The Department will maintain a directory composed of various listings from construction industry organizations, minority organizations, female and business organizations through direct solicitation, and up date as the need dictates.

The directory will list the name of the disadvantaged or women's business enterprise, address, telephone number, and shall specify which firms have been determined to be eligible DBE or female business organizations (WBE).

That portion of the Department's Confirmed List resulting from direct solicitations, will be updated monthly. Catalogs in the form of construction industry directories will be maintained in the central office.

The Department will oversee the continuing compilation of a statewide DBE/WBE Directory. This Directory will at a minimum, contain the firm's name, address, telephone number, area of work concentration, and other pertinent information about the business.

VI. CERTIFICATION AND CHALLENGE PROCEDURES.

Certification Procedure. All firms desiring to be certified by ODOT as DBE/WBE firms, must submit completed Schedule A or B Forms (See exhibits 1 and 2). All DBE/WBE firms are required to meet the eligibility standards in Appendix B-1 to this program. The Department of Transportation has established the policy of examining financial statements of all DBE/WBEs whose assets are at least eighty (80) percent of the dollar volume allowed by SBA for their particular business category averaged over the preceding three years. This examination will occur before any such contractor can be certified or recertified as a DBE/WBE. NOTE: The financial records to be submitted to the Department for certification, will be equivalent to the pre-qualification process prime contractors undergo.

APPLICANT CERTIFICATION PROCESS:

A. Provide financial records to substantiate financial status.

B. Provide authentication of social and economic disadvantage. (See Exhibit 3)

C. Certifications with the Department of Transportation are good until the first letting in January. During the first of January, each firm listed on the Roster of Certified Firms will be asked to reaffirm the fact that their ownership nor day-to-day operations have not changed. If either have changed, or if any other changes have occurred that affect ownership and managment control of the firm, a new Schedule A form must be completed and submitted to ODOT (See Exhibit 4).

D. Once a firm is certified, a certification notice is mailed to the firm stating the certification dates, and every firm must be in receipt of a certification notice to be considered a bona fide DBE or WBE or both (See Exhibit 5).

E. The DBE/WBE eligibility status of applicant out-of-state firms will be checked with the resident State Highway agency.

Challenge Procedure. A. The department of Transportation shall establish a challenge procedure consistent with this section, to determine whether an individual presumed to be socially and economically disadvantaged as provided in 23.62 is, in fact socially and economically disadvantaged.

B. In keeping with section 23.62, to determine whether an individual presumed to be socially and economically disadvantaged is in fact socially and economically disadvantaged, the Oklahoma Department of Transportation's Challenge Procedure is as follows:

1. Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the Department as a disadvantaged business. The challenge shall be made in writing to:

   Oklahoma Department of Transportation
   DBE/WBE Liaison Officer
   c/o Chief Engineer
   200 N. E. 21st Street
   Oklahoma City, OK 73105

2. With its letter, the challenging party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.

3. The department shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.

   a. If the department determines that THERE IS NOT reason to believe that the challenged party is not socially and economically disadvantaged, the department shall so inform the challenging party in writing. This terminates the proceeding.

   b. If the department determines that THERE IS reason to believe that the challenged party is not socially and economically disadvantaged, the department shall begin a proceeding as provided in paragraph B.4., 5. and 6. of this paragraph.

4. The department shall notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the department, within ten (10) working days, information sufficient to permit the department to evaluate his or her status as a socially and economically disadvantaged individual.

5. The department shall evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the challenged party. The department shall notify both parties of this proposed determination in writing, setting forth the reasons for its proposal. The department shall provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.

6. Following the informal hearing, the department shall make a final determination. The department shall inform the parties in writing of the final determination, setting forth the reasons for its decision.

7. In making the determinations called for in paragraphs B.3., 5. and 6. of this paragraph, the department shall use the standards set forth in Appendix C of 49 CFR Part 23.

8. During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect.

C. The final determination of the department under subparagraphs B.3.(a) and B. 6. may be appealed to the U. S. Department of Transportation by the adversely affected party to the proceeding under the procedures of 49 CFR 23.55.

VII. CERTIFICATION DENIAL AND DECERTIFICATION PROCEDURES. If the Department determines that an applicant firm or a previously certified firm does not meet all of the eligibility standards in Appendix B-1 to this program, the Department will notify the firm and follow the same procedures for evaluation and hearing as described under paragraphs 4, 5, and 6 of the Challenge Procedure. The same appeal rights, to the U. S. Department of Transportation, as described under paragraph C of the Challenge Procedures are available in case of certification denial or decertification. ODOT will advise FHWA of all decertification actions.

Upon notification of the decertification of a DBE/WBE firm by another State Highway Agency, ODOT will initiate a review of that firm's eligibility status in order to determine whether or not that firm maintains its certification in the state of Oklahoma.

VIII. PERFORMANCE BY SUBCONTRACTORS. When a DBE/WBE subcontractor is unable to perform successfully, it shall be incumbent upon the prime contractor to make good faith efforts to replace such with another DBE/WBE. Good faith efforts may be demonstrated by actions enumerated in Section X. 1-7.

IX. PERCENTAGE GOALS FOR DOLLAR VALUE OF WORK.

Contract goals. Contract goals for individual projects have not been set for the fiscal year ending September, 1985. Separate goals for women and disadvantaged businesses will be established for individual projects. However, for FY-84 our DBE goal is ten percent.

Annual Goals. Annual goals are predicated on the Federal-aid program funding for the three prior years, the total prequalified amount of active contractors, and the total prequalified amount of DBEs and WBEs. The average Federal-aid program for the fiscal years 1983-1986 is approximately 744 million dollars. In establishing the annual goal the Department is striving for 10% ($18.25 million) for DBEs and 3% ($5.5 million) for WBEs. These annual goals will be reassigned for each fiscal year based upon the previous year's accomplishment and the anticipated activity for the following fiscal year.

Project Goals. Project goals will be expressed as separate goals for DBEs and WBEs. The prime contractor will be required to identify the subcontractors by category and amount at the time of bid opening.

Percentage goals assigned to individual projects will be based on the size and type of project, geographical location within the state and availability of DBE and WBE contractors or subcontractors within the area of solicitation.

The goals and methods of establishment will be published in sufficient newspapers throughout the state to afford information to the general public and to allow a reasonable time to respond to same.

X. CONTRACT AWARD PROCESS. The Department will require that DBE/WBE subcontractors be named by the prime contractor prior to contract award. In addition to naming the subcontractor, information with regard to the description of work and dollar value of work to be performed by the DBE/WBEs will be required. Contracts will be awarded based on a) accomplishment of the DBE/WBE goal and b) reasonableness of price offered.

In order for their proposals to be considered, bidders who are unable to accomplish the DBE/WBE goals at the time of submitting their bid, shall demonstrate reasonable effort prior to contract award. The steps taken by the bidder to obtain DBE/WBE participation shall be documented and shall include, but is not limited to the following GOOD FAITH EFFORTS:

1. Attendance of a Pre-bid meeting, if any is scheduled by the recipient, to inform DBE/WBEs of subcontracting opportunities under a given solicitation.

2. Provide written notification to at least four (4) DBE/WBEs indicating that their interest in the contract is solicited. Written notification should be postmarked no later than seven (7) calendar days prior to the bid opening.

3. Provide a statement of the efforts made to select portions of the work proposed to be performed by DBE/WBEs in order to increase the likelihood of achieving the stated goal.

4. Make efforts to negotiate with DBE/WBEs for specific subbids including at a minimum:

   a. the names, addresses, and telephone numbers of DBE/WBEs that were contacted,

   b. a description of the information provided to DBE/WBEs regarding the plans and specifications for portions of the work to be performed.

   c. a statement of why additional agreements with DBE/WBEs were not reached.

5. Concerning each DBE/WBE, the subcontractors contacted, but rejected as unqualified by the prime contractor, shall be required, and the reasons for the competitor's conclusion shall be documented.

6. Efforts made to assist the DBE/WBEs contacted that needed assistance in obtaining bonding or insurance shall be documented.

7. Whether or not the contractor effectively used the services of community organizations and the Department of Transportation shall be considered.

Competitors who fail to meet DBE/WBE goals and fail to demonstrate sufficient reasonable efforts shall not be eligible to be awarded the contract. To ensure that all obligations under contracts awarded to DBE/WBEs are met, the recipient shall review the contractor's DBE/WBE involvement efforts during the performance of the contract. The subcontractor shall bring to the attention of the recipient any situation in which regularly scheduled progress payments are not made to DBE/WBE subcontractors.

XI. REPORTING AND MONITORING. Reporting forms showing project progress and progress of subcontractors will be required periodically (generally at forty to sixty percent completion and project final.) ODOT Project Managers will monitor DBE/WBE accomplishments throughout the life of the project (See Appendix C-1).

Subrecipients shall declare at the time of application, the DBE/WBE goals to be accomplished within the contract or grant. The necessary portions of this program for meeting the DBE/WBE goals shall be implemented in contracts resulting from any grant to the subrecipient. Enforcement of the requirements shall be accomplished by monitoring carried out by the Department element through which the grant was extended.

XII. MISCELLANEOUS. Percentages or dollar amounts of individual contracts will be increased as necessary in order to accomplish the stated goals of the total Federal-aid program. When determined to be necessary by the state, procedures to implement DBE/WBE set asides will be developed.

APPENDIX A-1

Oklahoma Business Development Center (OBDC)
Attention: G. M. Dodson, Executive Director
1500 Northeast Fourth Street - Suite 101
Oklahoma City, OK 73117
(405) 235-0430

Oklahomans for Indian Opportunities (OIO)
Attention: Project Manager
555 Constitution Avenue
Norman, OK 73609
(405) 329-3737

Oklahoma City Urban League
Attention: Employment Manager
3017 North Eastern Avenue
Okahoma City, OK 73111
(405) 424-5243

Tulsa Business Development Center
Attention: Cecil Williams
543 East Apache - Room 204
Tulsa, OK 74106
(918) 428-2511

Anadarko-Wichita-Caddo-Deleware Enterprises
Attention: Gene Watkins, Executive Director
and Tom Blanchard, Finalcial Analyst
WCD Enterprises
Post Office Box 998
Anadarko, OK 73005

Small Business Administration
Attention: Ms. Dorothy Jones
Federal Building - Suite 670
200 Northwest Fifth Street
Oklahoma City, OK 73102
(405) 231-5194

Oklahoma Department of Economic
and Community Affairs
Attention: Mary Fugett
4545 N. Lincoln Boulevard - Suite 285
Oklahoma City, OK 73105-3481
(405) 528-8200

Central Oklahoma Transportion
and Parking Authority
Steven C. Klika
Ass't. Executive Director
300 East California St.
Oklahoma City, OK 73104
(405) 231-2484

APPENDIX B-1

ELIGIBILITY STANDARDS FOR DISADVANTAGED BUSINESS AND WOMEN'S BUSINESS ENTERPRISES IN FEDERAL-AID HIGHWAY CONSTRUCTION TO ACCOMPANY SCHEDULE A

DEFINITION OF A DISADVANTAGED BUSINESS

A "Disadvantaged Business" or "DB" means a small business concern as defined pursuant to Section 3 of the Small Business Act and implementing regulations which is owned and controlled by one or more socially and economically disadvantaged individuals. Owned and controlled means a business:

(a) Which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals, or, in the case of a publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals, and

(b) whose management and daily business operations are controlled by one or more such individuals.

A "socially and economically disadvantaged individual" means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individuals found to be DISADVANTAGED by the Small Business Administration pursuant to Section 8 (a) of the Small Business Act.

(a) Black American (a person having origins in any of the black racial groups of Africa);

(b) Hispanic American (a person having origins or culture in Mexico, Puerto Rico, Cuba, Central or South America, and includes other Spanish origins, regardless of race);

(c) Native American (a person who is an American Indian, Eskimo, Aleut, or Native Hawaiian);

(d) Asian-Pacific American (a person having origins or culture in Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Phillippines, Samoa, Guam, the U. S. Territories of the Pacific, and the Northern Marianas); and

(e) Asian-Indian American (a person having origins or culture in India, Pakistan, and Bangladesh).

(f) Any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to Section 8 (a) of the Small Business Act, as amended (15 U.S.C. 637 (a).

DEFINITION OF A WOMEN'S BUSINESS ENTERPRISE

A "Women's Business Enterprise" or "WBE" means a small business concern, as defined pursuant to Section 3 of the Small Business Act and implementing regulations, which is owned and controlled by one or more women. Owned and controlled means a business:

(a) Which is at least 51 per centum owned by one or more women or, in the case of a publicly owned business, at least 51 per centum of the stock of which is owned by one or more women; and

(b) whose management and daily business operations are controlled by one or more such individuals.

DEFINITION OF A SMALL BUSINESS

In determining whether a business is a small business concern, the standards established by the Small Business Administration in 13 CFR Part 121 and its implementing regulations for the Definition of a Small Business for Government Procurement and the Definition of a Small Business for Government Subcontractors will be used. Therefore, a "Small Business" is defined as being one in which:

(a) The firm's average annual receipts for the three preceding fiscal years did not exceed $17 million; and/or

(b) Has subcontracts of $10,000 or less; and/or

(c) Has 500 employees or less;

OR

(d) One in which has subcontractors of over $10,000 and prime contractors in general construction in which less than 75 percent of the work falls in one of the categories below or

One in which Special Trade contractors (See Appendix B-1 average annual receipts for the three preceding fiscal years did not exceed seven (7) million dollars or

One in which Service Contractors (See Appendix B-1a) average annual receipts for the three preceding fiscal years did not exceed the amount listed in Appendix B-1.

(e) One in which suppliers of manufactured goods, including its affiliates, did not employ more than 500 persons whether in the Special Trade Categories or Service Categories.

ELIGIBILITY STANDARDS

The following standards will be used by the Department in determining whether a firm is owned and controlled by one or more socially and economically disadvantaged individuals/women and will therefore be eligible to be certified as a Disadvantaged Business OR Women's Business Enterprise.

1. Bona fide minority group membership shall be established on the basis of the individual's claim that he or she is a member of a minority community. However, the Department is not required to accept this claim if it determines the claim to be invalid. Ultimately, an applicant for DBE certification must be socially and economically disadvantaged. In cases where an applicant's minority status is not in question, the applicant may be presumed to be socially and economically disadvantaged unless a challenge is raised or there is evidence to the contrary. Where an applicant's minority status is in question, the Department shall apply the particular minority community recognition test to determine if the applicant has held himself out to be a member of the minority community and is so recognized by that community. In those cases where the appropriate minority community necessary for determining the applicant's minority status does not exist, the applicant shall be required to demonstrate social disadvantage on an individual basis. And, an individual's social disadvantage must stem from his or her color; national origin, gender; physical handicap; long-term residence in an environment isolated from the mainstream of American society; or other similar cause beyond the individual's control.

   As a general rule, economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same or similar line of business and competitive market area who are not socially disadvantaged.

2. An eligible Disadvantaged Business/Women's Business Enterprise shall be an independent business. The ownership and control by individuals shall be real, substantial, and continuing and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The Disadvantaged Business/WBE

shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests as demonstrated by an examination of arrangements. Recognition of the business as a separate entity for tax or corporate purposes is not necessarily sufficient for recognition as a DB/WBE. In determining whether a potential DB/WBE is an independent business, the Department will consider all relevant factors, including the date the business was established, the adequacy of its resources for the work of the contract, and the degree to which financial, equipment leasing, and other relationships with nonminority firms vary from industry practice.

3. The Disadvantaged Business/WBE owners shall also possess the power to direct or cause the direction of the management and policies of the firm and to make the day-to-day as well as major decisions on matters of management, policy and operations. The firm shall not be subject to any formal or informal restrictions which limit the customary discretion of these individual owners. There shall be no restrictions through, for example, by-law provisions, partnership agreements, or charter requirements for cumulative voting rights or otherwise that prevent these individual owners, without the cooperation or vote of any owner who is not a socially and economically disadvantaged/women from making a business decision of the firm.

4. If the owners of the firm who are not socially and economically disadvantaged/women are disproportionately responsible for the operation of the firm, then the firm is not controlled by socially and economically disadvantaged/women individuals, and shall not be considered a DB/WBE. Where the actual management of the firm is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the managers can be considered as controlling the business.

5. All securities which constitute ownership and/or control of a corporation for purposes of establishing it as a DB/WBE shall be held directly by socially and economically disadvantaged/women individuals. No securities held in trust, or by any guardian for a minor, shall be considered as held by a DB/WBE in determining the ownership or control of a corporation.

6. The contributions of capital or expertise by the DB/WBE owners to acquire their interests in the firm shall be real and substantial. Examples of insufficient contributions include a promise to contribute capital, a note payable to the firm or its owners who are not socially and economically disadvantaged, or the mere participation as an employee, rather than as a manager.

7. A firm must also be a "small business" as defined by Section 3 of the Small Business Act. In addition, Section 105(f) of the STAA of 1982 (Public Law 97-424) states that "if a business is not a small business concern according to the Small Business Act, then it is not eligible to participate as an MBE, WBE, or DB". This is true even though the business may be owned and controlled by minorities, women, or socially and economically disadvantaged individuals and is eligible in all other respects.

In addition to the above standards, the Department will give special consideration to the following circumstances in determining eligibility.

1. Newly formed firms and firms whose ownership and/or control has changed since the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.

2. A previous and/or continuing employer-employee relationship between or among present owners is carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities.

3. Any relationship between a DB and a business which is not a DB which has an interest in the DB is carefully reviewed to determine if the interest of the non DB conflicts with the ownership and control requirements.

A joint venture is eligible if the DB/WBE partner of the joint venture meets the standards for a disadvantaged business/women and the DB/WBE partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks, and profits of the joint venture.

A business wishing to bid as a joint venture DB/WBE must submit with their bid "Schedule B - Information for Determining Joint Venture Eligibility." These forms can be obtained on request from the Department.

Whether certifying as a DB/WBE or as a joint venture DB/WBE, a business shall cooperate in supplying additional information which may be requested in order to make a determination.

Once certified, a DB/WBE shall update its submission annually by submitting a new Schedule A or certifying that the Schedule A on file is still accurate. At any time there is a change in ownership or control of the firm, the DB/WBE shall submit a new Schedule A.

The Department will safeguard from disclosure to unauthorized persons information that reasonably may be regarded as confidential business information, consistent with Federal, State and Local law.

Any firm which believes that it has been wrongly denied certification as a DB/WBE or joint venture may file an appeal in accordance with Section 23.55 of 49 CFR Part 23.

APPENDIX B-1

SPECIAL TRADE CONTRACTORS	MAXIMUM AVG. ANNUAL RECEIPTS IN PRECEDING 3 YEARS
Plumbing, heating (except electric) and air-conditioning	$7 million
Painting, paperhanging, and decorating	"
Masonry, stone setting, and other stonework	"
Plastering, drywall, acoustical and insulating work	"
Terrazzo, tile, marble, and mosaic work	"
Carpentering and flooring	"
Floor laying and other floorwork	"
Roofing and sheet metal work	"
Concrete work	"
Water well drilling	"
Structural steel erection	"
Glass and glazing work	"
Excavating and foundation work	"
Wrecking and demolition work	"
Installation or erection of buildings, equipment	"
Electrical work	"
Special trade contractors, not elsewhere classified	"
Base House Maintenance	"

APPENDIX B-1a

SERVICE CONTRACTORS	
Engineering, except Military & Aerospace Equipment and military weapons	$7.5 Million
Architectural & Surveying Services except Naval	3.5 Million
Marine & Naval Architecture	9.0 Million
Military & Aerospace equip. except, weapons	13.5 Million
Trucking	12.5 Million
Janitoral	4.5 Million
Computer programming & software services	7.0 Million
Computer, related services	7.0 Million
Protective Services	6.0 Million
Dredging	9.5 Million

EXHIBIT 1

OKLAHOMA DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS/WOMEN's BUSINESS ENTERPRISE PROGRAM

SCHEDULE A

1. Name of Firm ______________________________

2. Address of Firm ______________________________
P.O. Box or Street City State Zip

3. Phone Number of Firm ______________________________
(Area Code) Number

4. Indicate whether firm is sole proprietorship, partnership, joint venture, corporation or other business entity (Please specify) ______________________________

5. Type of work the Contractor can perform. Indicate all types of work or service on attached sheet.

6. How many employees are normally on your payroll? ________

7. How many years the firm has been in business. ________

8. OWNERSHIP OF FIRM: Identify those who own 5 percent or more of the firm's ownership. Columns e and f need be filled out only if the firm is less that 100 percent ownership by socially and economically disadvantaged individuals.

   a. Name ______________________________
   b. Race ______________________________
   c. Sex ______________________________
   d. Years of ownership ______________________________
   e. Ownership percentage ______________________________
   f. Voting percentage ______________________________

With firms less than 100 percent ownership by socially and economically disadvantaged, list the contributions of money, equipment, real estate, or expertise of EACH OF THE OWNERS.

____

____

____

____

____

9. CONTROL OF FIRM: (a) Identify by name, race, sex, and title in the firm those individuals (including owners and non-owners) who are responsible for day-to-day management and policy decisionmaking, including, but not limited to, those with prime responsibility for:

1. Financial decisions __________________________

2. Management decisions, such as:

   a. Estimating ______________________________

   b. Marketing and Sales ______________________

   c. Hiring/firing of management personnel:

      ____

   d. Purchases of major items or supplies:

      ____

3. Supervision of field operations ____________________

   ____

10. For each of those listed in question 9, provide a brief summary of the person's experience and number of years with the firm, indicating the person's qualifications for the responsibilities given him or her.

____

____

____

____

____

11. Describe or attach a copy of any stock options or other ownership options that are outstanding, and any agreements between owners or between owners and third parties which restrict ownership or control of disadvantaged owners.

____

____

____

12. Identify any owner (see item 8) or management official (see item 9) of the named firm who is or has been an employee of another firm that has an ownership interest in or a present business relationship with the named firm. Present business relationships include shared space, equipment, financing, or employees as well as both firms having some of the same owners.

13. What are the gross receipts of the firm for each of the last 3 years? First year ending ____, gross receipts $____________.

Second year ending ____, gross receipts $__________________.

Third year ending _____, gross receipts $__________________.

14. Name of bonding company, if any: __________________________

Bonding capacity or limit Specify.________________________

Source of letters of credit, if any ______________________

____

15. Are you authorized to do business in the state as well as locally, including all necessary business licenses? ____yes; ____no.

16. Indicate if this firm or other firms with any of the same officers have previously received or been denied certification or participation as a DB and describe the circumstances. Indicate the name of the certifying authority and the date of such certification or denial.

AFFIDAVIT

"The undersigned swears that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of ____(name of firm) as well as the ownership thereof. Further, the undersigned agrees to provide through the prime contractor or, if no prime, directly to the grantee current, complete and accurate information regarding actual work performed on the project, the payment therefor and any proposed changes, if any, of the foregoing arrangements and to permit the audit and examination of books, records, and files of the named firm. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal and State laws concerning false statements."

NOTE: If, after filing this Schedule A and before the work of this firm is completed on the contract covered by this regulation, there is any change in the information submitted, you must inform the grantee of the change through the prime contractor or, if no prime contractor, inform the grantee directly.

Signature ______________________________

Name ______________________________

Title ______________________________

Date ______________________________

Corporate Seal (Where appropriate). ______________

Date ______________________________

State of ______________________________

County of ______________________________

On this ____day of ____, 19__, before me appeared (name) ______________________________, to me personally known who being duly sworn, properly authorized by (Name of Firm) ______________________________ to execute the affidavit and did so as his or her free act and deed.

(seal)

Notary Public ______________________________

My commission expires ________________________.

DBE/WBE WORK PROFILE ATTACHMENT

INDICATE TYPE OF SERVICE:

___ Accounting
___ Advertising
___ Appraising
___ Banking
___ Consulting (Type ______________________________)
___ Computer
___ Design
___ Engineering & Architectural
___ Equipment & Rental
___ Inspection

___ Maintenance ______________
___ Public Relations
___ Pest Control
___ Plumbing & Heating
___ Studies ______________________
___ Testing ______________________
___ Training ______________________
___ Trucking ______________________
___ Other ______________________
___ Other ______________________

INDICATE TYPE OF CONSTRUCTION:

Road & Bridge Construction

Paving
___ Concrete
___ Bituminous

Underground
___ Sewer
___ Water
___ __________

Other
___ Patching
___ Demolition
___ Landscaping
___ Sodding, Seeding

Concrete Flatwork
___ Curb & Gutter, Sidewalk
___ Small Culverts

Earthwork
___ Road Grading
___ Excavation, Embankment

___ Guard Rail & Fence
___ Clearing, Grubbing
___ Bridge
___ Other

General Construction

___ Architectural
___ Electrical
___ Mechanical

Supplier:

___ Asphalt
___ Concrete
___ Equipment-Type ______________
___ Fence
___ Gravel
___ Guard Posts
___ Landscape Plants
___ Paint

___ Petroleum Products
___ Sand
___ Signs
___ Steel
___ Other ______________
___ Other ______________
___ Other ______________
___ Other ______________

OTHER (Explain) ______________________________

____

____

____

DB FORM 01-9/83

EXHIBIT 2

OKLAHOMA DEPARTMENT OF TRANSPORTATION
INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY

SCHEDULE B

(THIS FORM NEED NOT BE FILLED IN IF ALL JOINT VENTURE FIRMS ARE OWNED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS)

1. Name of Joint Venture ____________________

2. Address of Joint Venture ____________________
City State Zip

3. Phone Number of Joint Venture ____________________
(Area Code)

4. Identify the firms which comprise the joint venture. (The Disadvantaged Business (DB) partner must complete Schedule A.)

____

A. Describe the role of the DB firm in the joint venture.

____

____

____

B. Describe very briefly the experience and business qualifications of each non-DB joint venturer: ____________________

____

____

____

____

____

____

____

5. Nature of the joint venture's business: ____________________
____
____
____

6. Attach a copy of the joint venture agreement.

7. What is the claimed percentage of DB ownership? ____________

8. Ownership of joint venture: (This need not be filled in if described in the joint venture agreement, provided by question 6.)

   A. Profit and loss sharing ____________________

   B. Capital Contributions, including equipment ____________
   ____

   C. Other applicable ownership interests. ____________
   ____
   ____

9. Control of and participation in this contract. Identify by name, race, sex and "firm" those individuals (and their titles) who are responsible for day-to-day decisionmaking, including, but not limited to, those with prime responsibility for:

   A. Financial decisions ____________________

   B. Management decisions, such as:

      1. Estimating ____________________

      2. Marketing and sales ____________________

      3. Hiring and firing management personnel ____________
      ____

      4. Purchasing of major items or supplies ____________
      ____

C Supervision of field operations ______________________________

NOTE: If, after filing this Schedule B and before the completion of the joint venture's work on the contract covered by this regulation there is significant change in the information submitted, the joint venture must inform the grantee, either directly or through the prime contractor if the joint venture is a subcontractor.

AFFIDAVIT

"The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to the grantee current, complete and accurate information regarding actual joint venture work and the payment therefor and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the grantee or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

Name of Firm	Name
Signature	Signature
Name	Name
Title	Title
Date	Date

Date __________ State of ______________ County of __________
On this ______ day of __________, 19___, before me appeared

(Name) ____ to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of Firm)________________________________ to execute the affidavit and did so as his or her free act and deed.

Notary Public

____ (Seal)

Commission expires

____

Date ________ State of ____________ County of ______________

On this _______ day of ______________, 19___, before me appeared (Name)________________________, to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (Name of Firm) ______________ _________________________ to execute the affidavit and did do as his or her free act and deed.

Notary Public

____ (Seal)

Commission expires

____

APPENDIX C-1

CONTRACT MONITORING AND COMPLIANCE PROCEDURES

Every federal contract that has a goal, either DBE or WBE, will be monitored for contract compliance. The first phase of contract monitoring and compliance shall take place at the time the low bidder is named, and before the contract is awarded; with this responsibility being delegated to the Division Manager, Office Engineering Division (DMOED). The second phase of monitoring takes place during the performance of the contract at the forty to sixty percent completion point, and at final completion. This responsibility has been delegated to the Engineering Managers or Project Managers (EMs or PMs). The third phase of monitoring shall take place before approval of subcontractors and service agents doing subcontracting work; with the responsibility being delegated to the Construction Engineer (CE).

I. Phase One

The first phase of contract monitoring and compliance shall be conducted by the DMOED on all projects with goals. Bidders who cannot meet the goal when their proposal is submitted and wish to be awarded the contract, if low bidder, shall submit documentation of "Good Faith Efforts" in their attempt to obtain DBE/WBE participation if they did not meet the established goal. The documentation in support of their claim shall be submitted no later than one working day prior to contract award. Documentation of the good faith efforts to obtain DBE/WBE participation shall be reviewed by the DMOED's staff and shall be a requirement for contract award. The DMOED shall review each proposal submitted for eligibility of award, if low bidder, during the time between bid opening up to one day prior to contract award.

By reviewing, it is meant, every low bid proposal presented to ODOT shall first be reviewed to see if the goal has been met at the time of bid opening, or no later than one day prior to contract award. The low bid proposal is also reviewed to determine if the subcontractor named is listed on the approved list of DBE/WBEs. The contractor is eligible to be awarded the contract **ONLY IF** the goal has been met by bid opening or at least one day prior to contract award. If the goal has not been met, the contractor is eligible for contract award **ONLY AFTER** his good faith efforts have been reviewed and accepted by the DMOED for the Department of Transportation.

After review of the good faith efforts, the Department may wish to waive any portion or all of the goal if it can be determined that the Contractor acted in good faith and there were no

DBE/WBE subcontractors or service contractors to do that particular job. The **GOOD FAITH EFFORTS** are as follows:

1. Attendance of a Pre-bid meeting, if any is scheduled by the Department to inform DBE/WBEs of subcontracting opportunities under a given solicitation.

2. Providing written notification to at least four (4) DBE/WBEs indicating that their interest in the contract is solicited. Written notification shall be postmarked no later than seven (7) calendar days prior to the bid opening.

3. Providing a statement of the efforts made to select portions of the work proposed to be performed by DBE/WBEs in order to increase the likelihood of achieving the stated goal.

4. Making efforts to negotiate with DBE/WBEs for specific sub-bids including at a minimum:

    a. a list of names, addresses, and telephone numbers of DBE/WBEs that were contacted,

    b. a copy of the information provided to DBE/WBEs regarding the plans and specifications for portions of the work to be performed,

    c. a statement of why additional agreements with DBE/WBEs were not reached.

5. Concerning each DBE/WBE contacted as service contractors orsubcontractors, but rejected as unqualified by the prime contractor; the Department shall require the specific reasons for the contractor's rejection. These rejections shall be in writing and shall be presented to the Department in support of his/her claim.

6. Efforts made to assist the DBE/WBEs contacted that needed assistance in obtaining bonding or insurance shall be documented and presented to the Department in authentication of the contractors claim.

7. Effectively using the services of community organizations and the Department shall be considered. Community organization lists must be updated at least yearly. Names gathered from lists older than one year shall not be considered as effectively using the services of community organizations.

8. Other innovative measures must first be approved by the Department before being used by a contractor in support of his/her claim.

ALL COMPETITORS WHO FAIL TO MEET THE SPECIFIED GOAL AND ALSO FAIL TO DEMONSTRATE SUFFICIENT REASONABLE GOOD FAITH EFFORTS SHALL NOT BE ELIGIBLE TO BE AWARDED THE CONTRACT AND SHALL NOT RECEIVE THE CONTRACT, EVEN IF LOW BIDDER.

II. PHASE TWO

The second phase of contract monitoring and compliance takes place during the life of the contract. It is the PM's (formerly Resident Engineers) responsibility to submit reports after the forty to sixty percent completion point and at the final completion point, but before final estimate has been paid. The monitoring and compliance reports submitted, indicate the amount of work that has been completed by the Prime Contractor, the dollar volume and percentage volume completed. In order for the PMs to submit their reports, they (the PMs) will need to contact the contractors directly and request some of the information from them. Therefore, ODOT shall require the prime contractors to submit reports to the PMs of all involvements with DBE/WBEs as it relates to goals and monies expended, on a monthly basis. After the forty to sixty percent completion point, in fulfillment of their goal, the contractors, as a condition for receiving progressive payments, shall submit to the PMs proof of payments made to DBE/WBEs on a monthly basis. Also, as a condition of receiving progressive payments, the contractors shall give proof of having paid their DBE/WBE subcontractors and service contractors before any final estimate payments can be made. These monthly checks will keep the goal requirements uppermost in the mind of the prime contractor and the Department. Additionally, the monthly reports are needed to monitor the progress of each prime contractor's efforts in meeting his/her goal requirements. By initiating the report monthly, a prime contractor's ability to meet his/her goal is known early enough to allow for other arrangements or remedial action if needed.

It is the PMs responsibility to notify the CE at the first indication that a contractor has deviated from the goals as stated in the Contract Provisions as compared to (1) the Pay items on the estimate, (2) the record of payments turned in by the contractor for credit toward his/her goal, (3) or by some other means. For example, if the subcontractors listed on the Contract Provisions are different from those receiving payment, as indicated by invoices, or if the dollar amount is different, or any situation where there appears to have been a change in contract provisions, the CE is to be contacted immediately and remedial action taken. The PM will initiate correspondence with the Prime Contractor with a carbon copy to the CE also notifying him.

III. PHASE THREE

The Third Phase of contract monitoring and compliance is the approval of subcontractors and notification of service contractors by the CE. The names submitted on the notification of subcontractors and service contractors must appear on the approved DBE/WBE List. And, an approved DBE/WBE is one whose name appears on the most current DBE/WBE List published by ODOT. It must be noted that not all kinds of work are considered subcontracting. For example, hauling or trucking items is considered a service and not a subcontracting opportunity. In this case, the prime contractor will not be required to request approval for a subcontract or subcontractor, but rather submit notification to the Department. He is NOW required to submit to the Construction Engineer. the names of all service contractors, dollar amount of work completed, dollar amount of work to be completed, and, an estimated time when it is different from the contract provisions. None the less, the contract goal as required in the contract provisions, is still to be met by the prime contractor. Therefore, the PMs stay alert of any deviation in contract provisions and must require proof from the prime contractor that certain services have been provided or performed by a named socially and economically disadvantaged individual or women's business enterprise individual (whichever is appropriate to meet the goal). Prime contractors who wish to deviate from the contract provisions in the selection of subcontractors, must first prove, through documentation of the good faith efforts, that no other socially and economically disadvantaged individuals are or were available to perform the job or that those same individuals could not perform the job. In any case, documented proof is required.

Prime contractors who wish to replace a non-DBE/WBE subcontractor with a DBE/WBE subcontractor may do so with very little effort. However, the reverse is not so. The request to replace a disadvantaged business enterprise (DBE) company with a non-disadvantaged business company must be viewed in light of whether or not the prime contractor will or can meet his/her goal if the transfer takes place. If the contractor has not met his goal, and the likelihood of his meeting the goal is remote, the CE must reject the request and/or recommend one of the corrective action options. (See Corrective Action Options.)

Sometimes during the course of a project, a prime contractor may, without the knowledge of ODOT, deviates from the stated contract provisions in obtaining a subcontracting service or some other resource that does not require ODOT's approval. In this case, the PM as soon as the deviation is detected, notifies the CE and together, they commence communication with the prime contractor as to, "HOW", "WHEN", and "WHERE" this contractor can meet his contract obligations. At some point soon after the deviation, if the contractor has not made proper progress toward satisfying the contractual goal, he shall be made aware of the corrective action options and a determination made as to what will be done in his/her particular case. It should be noted that with the initiation of a report of service contractors from the prime contractor, deviations from the contract provision should be at a minimum.

IV. CORRECTIVE ACTION OPTIONS

If the prime contractor has replaced one DBE/WBE subcontractor or service contractor with a non-DBE/WBE contractor, he (the prime) must present to ODOT's CE in writing, within five working days his/her reason(s) for replacing the DBE/WBE firm with a non-DBE firm and all evidence of his Good Faith Efforts. Based upon the documentation of Good Faith Efforts, the CE must make a determination to accept or reject the prime contractor's actions. If the Contractor's actions are rejected, the CE and the contractor together, must make a decision as to how best to solve the problem. And, one of the following may be levied on the contractor: (A) Waive any portion or all of the goal; (B) Transfer any portion or all of the goal of the present project to another of that contractor's on-going projects, (C) Deduct the dollar amount of the goal for that project from the final estimate, not as a penalty, but as liquidated damages for nonperformance of DBE/WBE Contract Goals, (D) Subtract the amount of the deficit goal from the contractor's prequalification limit, thereby limiting the amount of projects he can bid on. The Department can, and may make a decision to levy two or more of the options on a contractor if he has a record of not fulfilling contract obligations.

Attachment to Contract monitoring and compliance procedures

DEFINITION OF TERMS

In our effort to attain the highest level of mutual understanding for the Contrct Monitoring and Compliance Procedures, the following terms are defined as used in the procedures.

Subcontractor - An individual, partnership, joint venture, firm or corporation to whom the Contractor contracts part of the work under contract.

Service Contractor - An individual, partnership, joint venture, firm or corporation to whom the Contractor contracts part of the work through a contract for services.

DBE/WBE - An individual or firm that has been certified as a disadvantaged and/or women's business enterprise by the Department of Transportation. Only those individuals or firms that have been certified by ODOT can be used in fulfillment of goal requirements.

PM or EM - Denotes Project Manager or Engineering Manager (formerly Resident Engineer). The PM or EM's primary responsible is to monitor contract compliance throughout the life of a project and especially, at the forty to sixty percent completion point.

DMOE - Division Manager for Office Eningeering (formerly Office Engineer). The DMOE's primary responsibility is to monitor contract compliance from bid opening up to one day prior to contract award.

CE - Denotes Construction Engineer. The CE's primary responsibility is to monitor contract compliance at the time of approval of all subcontracts, before payment of final estimates, and upon notification via DBE Form (2) 8/84 for a change in service contractors. The contractors must notifiy the CE of all changes in service contractors. The CE will notify the PM and Contract Administration of any such changes in service contractors after the prime contractor has notified him.

Contractor Service Notification of Change, (DBE Form 2) - Submitted to the Construction Engineer in notification of a change in service agents or service contractors on all federal-aid projects with goal requirements. (See Appendix C-1)

DBE/WBE Business Enterprise Report (DBE Form (1) - Submitted by the PM or on all projects with goals at the forty to sixty percent completion point. (See Appendix C-2)

Corrective Action Options - Actions taken by ODOT against prime contractors who fail to carry out contract obligations in reference to goal requirements.

EXHIBIT 3

OKLAHOMA DEPARTMENT OF TRANSPORTATION
CONTRACT ADMINISTRATION DIVISION - (405) 521-2636
200 Northeast 21st St., Oklahoma City, OK 73105

Disadvantaged Business Enterprises and
Women's Business Enterprises

ITEMS NEEDED WHEN SUBMITTING SCHEDULE A FORM
FOR CERTIFICATION AS A DBE/WBE

1. Ultimately, an applicant for DBE Certification must be socially and economically disadvantaged. **In cases where an applicant's minority status is not in question, the applicant may be presumed to be socially and economically disadvantaged unless a challenge is raised or the Department has information to the contrary. Where an applicant's minority status is in question, the Department shall apply the particular minority community recognition test to determine if the applicant has held himself or herself out to be a member of the minority community and is so recognized by that particular community.**

   A copy of authentication papers proving social and/or economic disadvantaged classification is needed. Examples of acceptable authentication items are: (1) copies of administrative or judicial findings of discrimination; (2) letters concerning tribal affiliations from the chief or other leaders of the tribe; (3) Tribal roll registration; (4) naturalization papers; (5) birth certificates; (6) Federal or State certification or enrollment. (7) other documentation in support of your ethnic claim. **Where an applicant's minority status is in question, the Department shall apply the particular minority community recognition test to determine if the applicant has held himself or herself out to be a member of that minority community and is so recognized by that same community. In some cases, the appropriate minority community necessary for determining the applicant's minority status may not exist. In those cases, the applicant whose minority status is in question will be required to prove social and economic disadvantage and if successful may be certified on that basis.** Each individual's social disadvantage must stem from his or her color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or similar cause beyond the individual's control.
2. A copy of your by-laws, partnership agreement, articles of incorporation, or stockholders' agreement, which ever is appropriate, is needed.

3. Every question on the Schedule A Form MUST be answered in some manner to be considered for certification. All forms

containing unanswered questions will be returned for completion.

4. If your Schedule A Form is returned for any reason, you will have ten (10) days in which to return it or your file will be considered inactive. Return your schedule a form to: ODOT, Contract Administration, 200 Northeast 21st Street, Oklahoma City, OK 73105.

EXHIBIT 4

RECERTIFICATION REQUEST

DATE

Dear DBE/WBE Participant:

Your DBE/WBE certification is scheduled to expire January 31, 19XX. If there have been changes in your Schedule A Form, indicate same on a new Schedule A form and return to the address below. If there have been no changes in your schedule A form on file at ODOT and has not changed in its make-up of ownership percentage nor in its day-to-day operations, complete the lower portion of this letter and return to the address below.

Oklahoma Dept. of Transportation
Contract Administration
Attention: Ms. Bernice Price
200 Northeast 21st Street
Oklahoma City, OK 73105

Upon receipt of your reply, a new certification notice will be mailed to you if applicable. If there are further questions regarding your certification, please call Ms. Bernice Price at (405) 521-2636.

Sincerely,

B. C. Hartronft
Chief Engineer

bp
On this ____day of ____, 19___, before me appeared (name) ____, to me personally known who being duly sworn, properly authorized by (Name of Firm) ____ to execute the affidavit and did so as his or her free act and deed.

(seal)

Notary Public ______________________________ My commission expires __________________.

EXHIBIT 5

OKLAHOMA DISADVANTAGED BUSINESS PROGRAM
AND
WOMEN'S BUSINESS ENTERPRISE PROGRAM

CERTIFICATION NOTICE

The Oklahoma Department of Transportation on January XX, 1985 hereby gives notice that based on the Schedule A Form and/or our on-site review, has been certified as a Tsw Business Enterprise for the period January XX, 1985 to January 31, 19XX. If there are any changes in your Schedule A Form, you are to submit same to this office before the lapse of (10) ten working days. Additionally, at the end of this certification period you will need to renew your certification.

SIGNED: ____________________ January XX, 1985
Chief Engineer Date

SIGNED: ____________________ Januuary XX, 1985
Disadvantaged Business Certifying Officer Date

APPENDIX C-1

DBE/WBE BUSINESS ENTERPRISE REPORT

SERVICE CONTRACTOR
NOTIFICATION OF CHANGE

Date of Report ____________________

Prime Contractor ____

Address ______________________ $ ______________________ Contract Amount

Project Number ______________ County ______________

CHANGING FROM: **TO:**

Service Contractor ______________ Name ______________

______________ Address ______________

______________ Service Contractor's Telephone Number ______________

____

____

Date Work Started ________ Date Project Completed ____________

PLEASE INDICATE IF THE SERVICE CONTRACTOR IS A SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL; Yes ____ No ____ or WBE; Yes ____ No ____

Type of Service(s) Performed ______________________________

____

Estimated Date When Needed ______________________________

Dollar Amount of Service(s) $ ______________________________

________ Dollar Requirement $ ______________________________
DBE or WBE

Signed ______________________ Date ______________________
Prime Contractor

APPENDIX C-2

OKLAHOMA DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE REPORT

Date of Report ____________________

Form Completed at: (Check One)

40-60% Completion ________________
Date

Final Report ________________
Date

Project Number ______________ Contract Amount _________ County ______

Contractor ____
Name of Company

____
Address or P.O. Box City State Zip Code

Date of Award ______________ Date Work Order Issued _______________

Date Work Started ___________ Date Project Completed _______________

Division ___________________ Project Manager ______________________

Please indicate if the prime contractor is a socially and economically disadvantaged individual:
Yes _____ No _____. If yes, do not complete below this line. If no, complete the entire form.

	Dollar Amount	Required Percentage
Total DBE Requirement	$_________________	__________________
Total WBE Requirement	$_________________	__________________

Name & Address of DB/WBE Subcontractor(s)	Service/Supplies	$ Amount	%	Completed $ Amount

TOTAL(S) ____

Signed ______________________________
Branch Manager

Bernice

MAJORITY MEMBERS
PARREN J. MITCHELL, MARYLAND, CHAIRMAN
NEAL SMITH, IOWA
JOSEPH P. ADDABBO, NEW YORK
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NORMAN SISISKY, VIRGINIA
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TOM J. VANDERGRIFF, TEXAS
JIM COOPER, TENNESSEE
JAMES R. "JIM" OLIN, VIRGINIA
E. ROBIN BRITT, NORTH CAROLINA
RICHARD RAY, GEORGIA
CHARLES A. HAYES, ILLINOIS

Congreſs of the United States
House of Representatives
COMMITTEE ON SMALL BUSINESS
2361 Rayburn House Office Building
Washington, DC 20515

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CHRISTINE A. RUSSELL, MINORITY STAFF DIRECTOR

MAJORITY—225-5821
MINORITY—225-[illegible]

AREA CODE 202

February 6, 1985

RECEIVED
FEB 8 1985
CHIEF ENGINEER

Mr. Bill Hartronft
Assistant Director
Contract Administration
Oklahoma Department of Transportation
200 N.E. 21st Street
Oklahoma City, Oklahoma 73105

Dear Mr. Hartronft:

Enclosed is a copy of your responses to the questions asked at the meeting conducted by my staff assistant, Mrs. Gloria Bryant, on Tuesday, December 4, 1984, regarding the implementation of Section 105(f) of the Surface Transportation Assistance Act of 1982, by the State of Oklahoma.

I am requesting that you review this information very carefully to verify its accuracy.

Please provide responses for any unanswered questions and correct any mistakes you might find. My office should be in receipt of this information no later than February 20, 1985.

Should you wish additional information regarding this matter, please contact me or Mrs. Bryant at (202) 225-6020.

Sincerely,

Parren J. Mitchell

Parren J. Mitchell
Chairman

PJM/gbk

Enclosure

PROBLEM AREA I

The first problem area is fourfold and continues to impede DBE progress in this program. This Subcommittee is interested in finding out what steps Oklahoma is taking to: (1) eliminate barriers such as bonding, prequalification, and licensing; (2) provide technical, financial and other supportive assistance/ services to new and existing firms; (3) inform DBEs about specific contracting opportunities; and (4) ensure the maximum participation and utilization of DBEs.

1. What steps is Oklahoma taking to eliminate the barriers that negatively affect DBE participation, such as bonding, prequalification, and licensing?

- DBEs are required to be bonded only when they function as prime contractors.
- When a DBE functions as a subcontractor on a project, the prime contractor has the option of requiring or not requiring that the DBE be bonded. Oklahoma DOT believes that if a prime contractor does not require bonding for non-minority subcontractors, then he/she should not require bonding for non-minority subcontractors.
- Prequalification applies to prime contractors only. If it applied to subcontractors, Oklahoma DOT believes the financial auditing statement would present the biggest problems to DBEs.
- There aren't any licensing requirements.

2. How does Oklahoma assist DBEs financially?

- Oklahoma DOT has not been involved with providing financial assistance to DBEs.
- Supportive Services provides DBEs with the necessary information to gain bonding or financial assistance.
- In some instances, prime contractors have made interest free loans to DBEs. Example: Prime pays invoice for materials, which is deducted from the estimate.

- Prime contractors have been very cooperative in the area of lending 'up-front' money to DBEs.

3. **How does Oklahoma assist DBEs technically?**

- A consultant ~~has been~~ WAS hired to conduct seminars on the following topics:
  - interpretation of plans
  - specifications
  - bidding procedures
  - figuring equipment costs and labor costs
- The Bidding Text used by Oklahoma DOT was developed as a result of a seminar held to instruct DBEs on how to prepare information for submitting bid proposals.

4. **What kind of supportive services does Oklahoma provide for DBEs, other than technical or financial?**

- A bonding manual has been developed through supportive services contract.
- DBEs are given the names of the contractors who have pulled bidding information.
- DBEs are given a list of projects (other than legal advertising). This information is sent to Minority Development Agencies. It is also sent to organizations in D.C. that are active nationally.

5. What steps does Oklahoma take to ensure maximum participation and utilization of DBEs?

- Oklahoma DOT requires documentation from prime contractors. This documentation can be in the form of telephone calls, letters, etc.
- Oklahoma DOT furnishes prime contractors with a list of all certified DBEs prior to bid opening. This list also indicates the DBEs area of expertise.
- Oklahoma DOT requests that prime contractors attend the pre-bid opening, so that contacts can be made about 7 days before bid opening.

6. How does Oklahoma inform DBEs about specific contracting opportunities?

- DBEs are informed about specific contracting opportunities through newspaper advertisements (minority and non minority).

7. **How does Oklahoma ensure that DBEs receive payment for their services rendered in a timely fashion? (So DBEs can have a continuous cash flow)**

- To date this has not been a problem. If the DBE does not receive payment for the services rendered in a timely fashion, then the prime contractor will have his/her estimate withheld.
- The project manager is required to obtain a copy of the cancelled check, invoice or bill or purchase order.

8. **Who is responsible for investigating or handling complaints from DBEs regarding any problems they encounter in this program?**

[illegible]

- Bill Hartronft - ~~Assistant~~ Director of Contract Administration.
  Oklahoma Department of Transportation.

PROBLEM AREA II:

The second problem area is noncompliance which undermines the integrity and intent of this program. This Subcommittee is interested in learning what procedures are used by Oklahoma to ensure: (1) compliance with Section 105(f); (2) data on DBE participation and the amount of funds DBEs receive under this Act is accurate and reflects actual contract awards only; (3) they have adequate procedures to detect and take strong actions against front companies; (4) they utilize debarment procedures or name appropriate recommendations for violators of the program; and (5) maximum contracting opportunities are provided for DBEs.

1. What is the total dollar amount that Oklahoma received under this Act for FY 1983 and FY 1984?

- FY 1983 - $162,924,891.00
- FY 1984 - $163,835,987.00

2. Of that total dollar amount, how much has been used to provide contracting opportunities for DBEs for FY 1983 and FY 1984? (pre construction and construction)

- To date, no Federal funds have been committed to pre-construction services, however Oklahoma is in the process of getting into engineering contracts that will utilize Federal funds. (Supportive Services contracts are not included in the above statement).
- FY 1983 - $14,726,056.61
- FY 1984 - $16,300,155.45

3. What goal level did Oklahoma achieve in FY 1983 and 1984?

- FY 1983 - 12.04%
- FY 1984 - 13.18%

4. What is Oklahoma's projected goal level for FY 1985?

- Projected goal level for 1985 is 10%

5. How does Oklahoma arrive at the figure or percentage that represents the level of DBE participation?

- By counting actual awards only.

6. Does Oklahoma count actual awards only? Or combine actual awards with future contract commitments?

- Actual awards only.

7. Does Oklahoma keep an ethnic breakdown of the minorities who have participated in this program to date?

- Yes. (See DBE Participation in Federal-Aid Highway Contracts Oklahoma Department of Transportation.)
- FY 1983/1984
  - Native American ~~-61.07%~~ 64.44%
  - Black ~~-36.[illegible]6%~~ 33.52%
  - Hispanic ~~-.39%~~ 0.39% .41%
  - Asian Pacific ~~-1.56%~~ 1.63%

8. Are any of your prime contractors members of a minority? If yes, how many and to what minority group do they belong?

- Yes
- FY 1983 - $2,421,947.90 (Federal funds only) was-awarded to DBEs as prime contractors.
- FY 1984 - $2,667,674.90 (Federal funds only) was awarded to DBEs as prime contractors.
- To date 14 minority prime contractors have done business with Oklahoma DOT.

9. What sanctions does Oklahoma impose on primes who fail to meet their goal?

- Oklahoma DOT has refused to accept bids responsive because the prime contractor did not make an affirmative action effort.
- Oklahoma DOT has awarded contracts to 2nd or 3rd bidder.
- AGC's have cooperated with Oklahoma DOT.

10. To meet your goal, does Oklahoma seek the services of DBEs on pre-construction contracts?

- No Federal funds have been committed to pre-construction contracts. However, Oklahoma DOT is in the process of getting into engineering contracts that will utilize Federal funds. (Supportive Services contracts are not included in the above statement.)
- These pre-construction contracts will be in the design area.

PROBLEM AREA III:

The last problem area to be addressed is that of certification. Oklahoma's certification program will be investigated to determine if their program is designed to increase DBE participation by employing enough trained personnel to process applications expeditiously. This Subcommittee will evaluate the forms used for certification to find out if they are relevant and adequate to determine eligibility.

1. What is the average length of time it takes for an eligible firm to become certified? (Shortest length of time? Why? and Longest Length of time? Why?)

- The average length of time it takes an eligible firm to become certified is 30-40 days.
- If all requested information is in order, the shortest length of time it takes an eligible firm to become certified is 2 weeks.
- The longest length of time it takes an eligible firm to become certified is 45 days. This could be due to incomplete applications, discrepancies in the requested information, etc.
- Firms are given 10 days to respond when additional information is needed.

2. What steps must each applicant complete before he/she is certified?

- Each applicant must submit a complete application, that includes documentation of minority status, by-laws, etc.

3. What kind of investigation is made by your agency to determine eligibility?

- The information submitted on the application is used to determine whether or not a firm is eligible to participate under this Act.
- If there are any doubts, an announced on-site review of the firm is made.
- Many applicants submit their applications at the office.

4. How many people are on your certification team? Do they have any other job related responsibilities?

- Two. Bernice Price and Lee Shafer
- Yes, Bernice Price is the Title IV Officer; Lee Shafer is involved with the prequalification process and bid-proposal documents.

5. How long does certification last?

- Certification lasts one year.

6. How many companies were certified in 1984? May I have a copy of the list?

7. How many companies are waiting to be certified? Why?

- As of December 4, 1984, four firms were awaiting certification. See attachment for explanation.

8. What kind of effort is Oklahoma making to improve its certification process?

- Oklahoma DOT is satisfied with the way the process is working now. Areas that initially presented problems have been corrected.

9. How many of the firms that have been certified are owned solely by a minority?

- 65 firms are owned solely by a minority. These firms are owned by:

Native American Male (NM)	-27
Native American Female (NF)	- 4
Black Male (BM)	-26
Black Female (BF)	- 2
Hispanic Male (HM)	- 5
Asian American Male (AMM)	- 1
Asian Pacific Male (APM)	- 0

10. How many of the firms that have been certified are partnerships with one of the partners being a non minority?

- 30 firms are partially owned by minorities.

Native American Male (NM)	-12
Native American Female (NF)	- 5
Black Male (BM)	- 9
Black Female (BF)	- 1
Hispanic Male (HM)	- 2
Asian American Male (AMM)	- 0
Asian Pacific Male (APM)	- 1

11. What steps has Oklahoma taken to increase DBE participation in this program?

- Hired consultants to recruit DBEs.
- Developed DBE directory
- Staying in contact with minority community.
  (OIO - Oklahomans for Indian Opportunities)
- Staying in contact with Avanti (org. that has contract with DOT)
- Staying in contact with Native American Consultant Center.

Concerns: (Oklahoma)

1. Interpretation of the regulations as requiring set-asides.
2. Minority contractors have not quite fully grasped the concept of this program. Set-aside to them as it relates to this program means contracts that are specifically set-aside for them.
3. Getting DBEs to understand this program.
4. Confidence in program by DBEs.

Possible Witnesses for Minority Business Representation

1. Ray Freeman - Management Consultant

2. G.M. Dodson - Manager - Oklahoma Business Development Center.

3. Iola Haden—Oklahoman's For Indian Opportunity

DBE PARTICIPATION IN FEDERAL-AID HIGHWAY CONTRACTS
OKLAHOMA DEPARTMENT OF TRANSPORTATION
FY-83

AWARDS	FEDERAL FUNDS	SUBCONTRACTS BY ETHNIC CATEGORY				
		BLACK	HISPANIC	ASIAN PAC.	NATIVE AMER.	TOTAL
Oct. 82	1,690,224.80	--	--	--	951,333.37	951,333.37
Nov.	7,979,384.47	--	26,696.00	--	129,971.90	156,667.90
Dec.	2,422,540.72	--	--	--	1,117,265.00	1,117,265.00
Jan. 83	3,970,678.00	--	--	--	140,840.67	140,840.67
Feb.	7,119,867.55	--	--	--	1,123,816.41	1,123,816.41
Mar.	11,686,063.61	--	--	--	606,445.65	660,445.65
April	3,416,415.68	--	--	--	596,995.00	596,995.00
May	17,226,740.00	49,459.40	--	--	894,356.39	943,815.79
June	6,011,765.00	39,957.50	--	--	2,571,053.31	2,611,010.81
July	20,284,846.09	--	--	--	1,842,830.83	1,842,830.83
Aug.	12,322,189.81	253,995.25	--	--	626,517.55	*880,512.80
Sept.	11,556,885.04	721,406.36	--	--	1,033,116.02	*1,754,522.38
TOTAL	105,687,600.77	1,064,818.51	26,696.00	--	11,634,542.10	12,726,056.61

In further explanation:

1. The total amount required by law to be spent with minorities is ten percent of Federal funds expended which translates to $10,568,760.07 ($105,687,600.77 times 10%)

2. Total contracts and subcontracts awarded to minorities $12,726,056.61 or 12.04%

3. Total funds apportioned for FY 83 was $162,924,891.

* Note: These figures represent total subcontracts approved no matter what month they fell in, whereas the other figures in this column (Total Column) represent subcontracts and contracts approved and/or awarded in that particular month.

DBE PARTICIPATION IN FEDERAL-AID HIGHWAY CONTRACTS
OKLAHOMA DEPARTMENT OF TRANSPORTATION
FY-84

AWARDS	FEDERAL FUNDS	SUBCONTRACTS BY ETHNIC CATEGORY				
		BLACK	HISPANIC	ASIAN PAC.	NATIVE AMER.	TOTAL
Oct. 83	5,667,870.31	10,771.90	--	--	779,629.60	790,401.50
Nov.	9,975,632.09	--	21,879.45	--	978,998.78	1,000,878.23
Dec.	9,919,105.11	1,015,599.25	--	9,236.25	1,596,812.94	2,621,648.44
Jan. 84	NO LETTING	--	--	--	--	NO LETTING
Feb.	8,367,522.03	141,370.63	--	2,828.00	1,091,041.40	1,235,240.03
Mar.	8,082,233.74	451,948.00	--	--	1,035,845.55	1,487,793.55
April	9,415,323.72	--	29,297.40	--	521,160.38	550,457.78
May	20,773,338.57	1,897,771.36	--	254,250.00	799,099.90	2,951,121.26
June	NO LETTING	--	--	--	--	NO LETTING
July	24,636,019.94	1,806,678.33	16,302.00	--	1,944,825.23	3,767,805.56
Aug.	12,661,901.09	101,053.20	--	--	1,357,588.80	1,458,642.00
Sept.	14,081,252.36	38,200.00	--	--	397,967.10	436,167.10
TOTAL	123,580,198.96	5,463,392.67	67,478.85	266,314.25	10,502,969.68	*16,300,155.45

In further explanation:

1. The total amount required by law to be spent with minorities is ten percent of Federal funds expended, which translates to $12,358,019.90. ($123,580,198.96 times 10%)

2. Total contracts and subcontracts awarded to minorities $16,300,155.45 or 13.18%.

3. Total funds apportioned for FY-84--$163,835,987.

* Note: The figures listed represent total awards and/or subcontracts approved no matter what month they were approved in. There were several contracts listed in the August and September awards that had not had work orders issued or, had not requested subcontract approval. Therefore, these two months' totals have been understated by nearly a half million dollars.

FHWA Region 6

Disadvantaged/Women's Business Enterprise Certification Guidelines

Prepared by the Regional
Office of Civil Rights

Issued on October 24, 1983

Revised: July 6, 1984
January 18, 1985

FHWA REGION 6
DISADVANTAGED/WOMEN'S BUSINESS ENTERPRISE CERTIFICATION GUIDELINES

The integrity of our Disadvantaged/Women's Business Program depends, to a large extent, upon the establishment of systematic procedures to ensure that only bona fide disadvantaged/women's business firms are certified to participate in FHWA's federally assisted programs. The Department of Transportation's MBE regulation at 49 CFR 23 places the primary responsibility for the certification process upon the State Transportation/Highway Agencies. While the regulations do not prescribe, beyond the Schedule A and B forms, the specific procedure to be used in certifying firms, the intent of 49 CFR 23 is clearly to ensure that only bona fide disadvantaged/women's business firms are certified.

The States in Region 6 have developed a variety of certification procedures. Although it is the applicant's responsibility to submit the required information in a notarized document under penalty of perjury, it is the State's responsibility to certify that the applicant firms meet the eligibility standards of 49 CFR 23. Accordingly, the following Regional Disadvantaged/Women's Business certification guidelines are issued to provide guidance to the States and promote consistency. The guidelines have been developed with DOT certification appeals decisions in mind and have been coordinated with the DOT and FHWA Offices of Civil Rights.

Each State is to incorporate into its Disadvantaged/Women's Business Program document certification procedures which ensure that firms certified as DBE's and WBE's meet the eligibility criteria set forth under 49 CFR 23. These are discussed below.

Business Size

All firms applying for either DBE or WBE status must first meet the small business requirements defined in Section 3 of the Small Business Act. Accordingly, the State's certification procedure should first determine whether an applicant firm meets the standards established in the Small Business Administration's Regulation at 13 CFR 121. If the applicant firm does not meet the small business size standards, certification shall be denied and no further inquiry is necessary.

Social and Economic Disadvantage Status

Once an applicant firm is determined to be a small business, social and economic disadvantage status are to be reviewed if the firm is applying for disadvantaged business status. Guidance for determining social and economic disadvantage is provided under Appendix C to Subpart D of 49 CFR 23. Basically, social and economic disadvantaged status shall be conferred upon applicant firms in instances where the firm:

- Has been granted 8(a) certification by the Small Business Administration.
- Is owned and controlled by a member(s) of one of the minority groups designated in 49 CFR 23.62, or
- Where the applicant firm is owned and controlled by an individual(s), who although not a member of one of the minority groups designated in 49 CFR 23, establishes social and economic disadvantage based on identification with another group.

BEST [illegible]ABLE

8(a) Status. Applicant firms found to be disadvantaged by the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act shall be conclusively presumed by the State to be socially and economically disadvantaged. The social and economic disadvantage status of such firms cannot, under 49 CFR 23, be overturned by a State. However, a State may, where appropriate, challenge an 8(a) firm's status to the SBA. In addition, in cases where the State has evidence that an 8(a) certified firm does not meet the small business size standards, the State should deny certification to the firm. In these situations, the State should also refer the information to the SBA.

Minority Group Membership. In cases where the applicant claims social and economic disadvantage based on membership in one of the designated minority groups, the State shall ensure that the applicant's minority status is clearly established. Once minority status is clearly established, the applicant shall be rebuttably presumed to be socially and economically disadvantaged. This means that the applicant's social and economic disadvantage status is established as a fact until the presumption is effectively rebutted. However, the State is expected to require even members of the designated minority groups to prove their disadvantaged status if reasonable evidence to rebut the presumption is available to the State.

The minority groups designated by the regulation are Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and Asian Indian Americans. Definitions of these groups for FHWA programs are found at 49 CFR 23.62. In determining minority group membership it is important to note that 49 CFR 23.53, (l) provides that, "Bona fide minority group membership shall be established on the basis of the individual's claim that he or she is a member of a minority group and is so regarded by that particular minority community." (emphasis added). This is particularly important in certifying firms owned by individuals whose racial/ethnic origin is in question. In such cases, the State should apply the particular minority community recognition test to determine if the applicant has held him or herself out to be a member of the minority community and is so recognized by that community. In cases where the appropriate minority community does not exist or is not readily identifiable and the applicant's minority status is in question, the applicant will be required to prove his or her disadvantaged status. Attachments A and D to these guidelines list documents considered acceptable evidence of minority status. Attachment B provides guide questions for applicants to respond to in proving their social and economic disadvantage status.

For purposes of qualifying to participate in the State's DBE program as a Native American, any individual who can identify him or herself as authentic American Indian or Alaskan Native properly enrolled, registered or recognized by the specific American Indian tribe, clan, nation or other group or community of American Indians, including any Alaskan Native Regional or village corporation of which he or she claims to be a member, is a Native American. Another acceptable identification is that the individual American Indian or Alaskan Native remains qualified to participate in any awards or judgments rendered by a Federal or State judicial body on behalf of the American Indian tribe, clan, nation, Alaska Native Regional Corporation or other legal entity of which the individual claims to be a member. Any State or Federal certification or enrollment that the individual is a member of any of the foregoing groups of Native Americans is also adequate proof. It is not necessary for the individual American Indian or Alaskan Native to actually reside on a Federal or State Indian reservation to be eligible to participate in the program.

Further, it should be noted that the definition of American Indian that appeared in 49 CFR 23.5d,"American Indian and Alaskan Native (a person having origins in any of the original peoples in North America.)" was changed by 49 CFR 23.62c, Subpart D, "Native Americans which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;" (emphasis added). This change implies a greater degree of proof that an applicant is in fact an American Indian and does not merely have a certain blood quantum of Indian origin.

Individual Determinations. Finally, persons who are not members of one of the designated minority groups may request the State to make an individual determination that they are socially and economically disadvantaged. The State should make these individual determinations consistent with the guidance in 49 CFR 23, Subpart D, Appendix C.

Rebuttal of Disadvantage Status

The presumption of social and economic disadvantage operating in favor of the designated minority groups may be rebutted at any time before or after certification. Section 23.69 of the regulations provides for a challenge procedure by third parties. This is not, however, the only way the disadvantaged status of a minority group member may be challenged. If the State comes into possession of credible information that would lead a reasonable person to believe that a minority individual is not socially or economically disadvantaged the presumption is no longer operative and the burden of proof shifts back to the applicant. The existence of the presumption does not mean that the certifying agency must ignore obvious evidence that any applicant for certification is not socially or economically disadvantaged unless a third party brings a challenge. It means, rather, that in the absence of such evidence it must presume that a minority applicant is socially and economically disadvantaged, and cannot require the applicant to prove it.

Practically speaking, the existence of clear evidence that an otherwise qualified minority applicant is not disadvantaged puts such applicant in a position similar to a challenged minority or an individual claiming disadvantage who is not a member of a designated group. If the State tentatively determines, on its own initiative based on such clear evidence, that the owner of the firm is not socially and economically disadvantaged, the State should ensure that the owners are afforded procedural safeguards equivalent to that provided in the case of third party challenges under Section 23.69.

Ownership and Control

Once business size and social and economic disadvantage status have been determined, ownership and control must be evaluated to ensure that firms applying for DB certification are in fact independent firms owned and controlled by one or more socially and economically disadvantaged individuals. Similarly, firms applying for WBE certification must be evaluated to ensure that they are independent and are owned and controlled by women. An independent firm is one that is not inextricably associated with another firm through ownership, affiliation, sharing of employees, facilities, profits and losses. If there is an "umbilical cord" relationship between the disadvantaged/women-owned business and a non-minority company, the firm is not an independent business. The factors which should be reviewed by the State in determining independent status pursuant to 49 CFR 23.53(2) include the date the business was established, adequacy of resources for the work involved, and the degree to which financial, equipment leasing, business, and other relationships with non-minority firms vary from normal industry practice.

In determining ownership and control, the State should look beyond what is reflected on the ownership documents. Control of the applicant firm should also be determined. Control is comprised of two parts, operational and managerial. Under operational control the minority or female applicant must show that he/she independently makes the basic decisions in daily operations. Appendix A to Subpart D of 49 CFR 23 under Section 23.62 provides that..."It is important to note that the business owners themselves must control the operations of the business. Absentee ownership, or titular ownership by an individual who does not take an active role in controlling the business, is not consistent with eligibility as a disadvantaged business under this regulation."

To determine managerial control, the minority or female applicant must demonstrate that he/she possesses the power to hire and fire personnel and to make independent and unilateral business decisions which guide the future and destiny of the business including responsibility for signature on insurance, bonds, payroll checks, letters of credit, contractual, banking service and other agreements. In addition, 49 CFR 23.53(a)(4) provides that, ". . . When the actual management of the firm is contracted out to individuals other than the owner, those persons who have the ultimate power to hire and fire the managers can, for the purposes of this part, be considered as controlling the business."

Applicants for WBE status in cases where the firm is jointly owned by husband and wife, should be treated the same in all States irrespective of whether the State has a community property law. The State should determine WBE eligibility by ensuring that the firm is in fact at least 51% owned by the woman and the firm's management and daily business operations are controlled by the woman who owns it. In reaching that conclusion, the State should determine whether the firm meets the eligibility standards contained in 49 CFR 23.53.

To assist the States further, a summary of eligibility requirements, including key factors, acceptable evidence and regulatory references has been included as Attachment D to these guidelines. The summary is intended to serve as a reference guide for State personnel involved in making eligibility determinations.

Structure of Certification Process

The State's certification process may take a variety of forms. Some States use committees with legal, auditing, engineering, civil rights and community representation. The form to be taken is left to the State's discretion. It is not expected that 100% of all applicants for certification be reviewed in-depth. While this would be desirable, we recognize that the resources needed may not be available to the State. In-depth verification of certification applications should normally be triggered when:

(1) The minority status of the applicant firm's principal(s) is in question. Minority status may be in question in instances where the applicant claims degrees of origin based on ancestry, lack of physical and/or cultural characteristics normally associated with the particular ethnic/racial origin and where another party raises the question.

(2) The applicant firm was in existence for some time prior to its request for certification and was not previously recognized as a disadvantaged, minority or female owned firm. This factor is particularly important where an existing firm has been reorganized with the apparent intent of qualifying as a DBE or

WBE (e.g., a long-standing subcontracting firm owned by a male is suddenly reorganized to show 51% ownership by his wife with little other apparent change in the business).

(3) One or more of the principal(s) of the applicant firm have been or are presently involved as principals in a non-minority or male owned firm, or a non-minority or male owned firm or individual has an interest in the applicant firm. This factor is particularly important where the applicant firm proposes to work as a subcontractor for a firm in which the male or non-minority participant in the applicant firm also has an interest.

(4) The applicant firm claims to be a joint venture. Joint ventures in themselves are not ineligible, however, they should be scrutinized to ensure bona fide DBE/WBE ownership and control exists to the extent claimed.

(5) The experience and qualifications of the principals of the applicant firm appear to be insufficient to exercise the required degree of control, or the minority and female principal's experience and qualifications are, relatively speaking, substantially less than those of non-minority or male principals, suggesting that the latter would have the predominant role in making operational and/or managerial decisions.

(6) The principals of the applicant firm have received stock as gifts (particularly for firms applying for WBE status) or the principals have been issued stock which has never been purchased or where there has been a minimal or undocumented cash outlay on the part of the minority or female principals which is disproportionate to their interest in the applicant firm or to the amount of cash outlay from the non-minority or male interests.

(7) In the case of a WBE firm, the firm's female principal(s) are closely related (e.g., wife, daughter, sister, or other close family relationship) to the principal(s) of a prime contractor or other subcontractor in the same or related type of business. This factor is particularly important if the WBE proposes to work for a prime contractor in which a male relation is a principal.

(8) Notice is provided that the firm has been denied certification or has been decertified by another State, or a third party alleges that the firm is not owned and controlled by a socially and economically disadvantaged individual(s) or is otherwise ineligible.

(9) FHWA requests verification.

The above list is not all inclusive. Typical examples of suspected fronts involving a female/minority, and corporate spin-off arrangement are provided in Attachment C to this memorandum. The areas considered as "red flags" may differ; however, the attached is a tool that can be used to cause closer scrutiny.

To assist the State in developing or refining its Disadvantaged Business Certification process, a guide outlining major components of an effective process are listed in Attachment A. As can be seen from Attachment A, firms applying for certification must be prepared to verify their status by making available for review the appropriate books, records, and other documents pertaining to the financial and operational aspects of the firm and its principals. The Department of Transportation's MBE regulations at 49 CFR 23.53(e) provide that; "A business wishing to be certified as an MBE or joint venture MBE by a DOT recipient shall cooperate with the recipient in supplying additional information which may be requested in order to make a determination." Applicant firms that refuse to provide the necessary information should not be certified. It is suggested that the State develop procedures to notify applicants for certification that verification of information they provide on Schedule A or B may require additional documentation.

The State's certification process should also provide for the annual update of all certifications. The responsibility to submit the annual update falls upon each certified firm. These firms may submit a new Schedule A or B or certify that the schedule on file with the State is still accurate.

Courts may be adverse to upholding decertifications where the party decertified has not been afforded the opportunity to be heard. Appeals to the Department of Transporation do not include a hearing process, and mere review of a State determination does not assure due process. Consequently, the State's procedure for denial of certification or decertification should provide for notice of the State's proposed action and the basis therefor together with an opportunity to request a hearing. The hearing itself need not be formal and adversarial, but provide the applicant the opportunity to present evidence and arguments in support of the status claimed, and to furnish a record which is reviewable by a court. In addition, the State's procedure must provide notice to the decertified firm of its appeal rights to the U. S. Department of Transportation.

Finally, the State's certification process should provide that whenever an out-of-State firm applies for certification, the State Transportation/Highway Agency in the applicant firm's resident State will be contacted and asked to provide certification information on the applicant firm. This information should be considered by the State in acting upon the application. It is emphasized that one State's certification decision is not binding on another State. Each State's decision must stand on its own merit. However, notice that another State has decertified a firm should be sufficient basis for a review of the firm's eligibility to participate in the DBE/WBE program.

The name and address of each firm decertified and its principal officials, along with the basis for the action, are to be provided to the Regional Office of Civil Rights, through the Division Office. The Regional Office of Civil Rights will further notify the other States in the region and the Headquarters Offices of Civil Rights and Chief Counsel.

The role of the Division Office is primarily to ensure that the State develops and implements an effective certification procedure. Additionally, the Division Office is expected to review the State's certification procedure and suggest improvements as appropriate. Further, it is expected that the Division Office will ensure that the State reviews certifications of firms decertified by other States.

Attachment A

DB/WBE CERTIFICATION/VERIFICATION PROCEDURE
Major Components

I. DEFINITIONS

A. Disadvantaged Business:

1. Must be a small business as defined by Section 3 of Small Business Act (See 49 CFR 23 Subpart D, Appendix B and 13 CFR 121).

2. Must be socially and economically disadvantaged minority or female as defined by 49 CFR 23, Subpart D.

   a. Black American

   b. Hispanic American

   c. Native American

   d. Asian Pacific American

   e. Asian Indian American

   f. Members of other groups or individuals economically and socially disadvantaged as determined by the Small Business Administration under Section 8(a) of the Small Business Act (15 USC 637(a)).

   g. Other individuals determined to be socially and economically disadvantaged by the recipient under 49 CFR 23, Subpart D.

3. Ownership and Control

   a. 51% ownership by a socially and economically disadvantaged individual.

   b. Daily management and business operations controlled by one or more socially and economically disadvantaged individuals.

B. Women's Business:

1. Must be a small business as defined by Section 3 of the Small Business Act (See 49 CFR 23, Subpart D, Appendix B and 13 CFR 121).

2. Ownership and Control

   a. 51% ownership by a woman or women.

   b. Daily management and business operations controlled by one or more women.

II. CERTIFICATION

A. Certification Office or Officer
(Some States have effectively utilized a committee in their certification process. Other States have been equally effective without a committee. Of more importance is that a systematic procedure be established.)

1. Suggested Committee Composition (If applicable)

   a. Civil Rights representative

   b. Attorney

   c. Accountant/Auditor

   d. Contract Administrator

2. Function

   a. Review certification applications and documents.

   b. Review investigative reports following on-site visits to DB/WBE's.

   c. Hold certification hearings.

   d. Recommend approval/disapproval of firms as DBE's/WBE's.

   e. Periodically review and revise certification/verification procedures.

   f. Notify firms of certification, recertification, decertification or denial of certification.

B. Verification
(The following areas should be reviewed as appropriate in each case. Firms should be required to submit the documentation necessary to ascertain eligibility. Failure of the firm to do so constitutes grounds for denial of certification or decertification.)

1. Document Review

   a. Business Size

      - Certified Income Statements
      - Federal tax returns for most recent 3 years

   b. Minority Status

      - Birth certificates
      - Naturalization papers
      - Indian tribal roll, tribal voter registration certificate, or other official document.
      - History of individual having held himself to be a member of the minority group or community (Driver's license, school, medical and service records may help verify this).
      - Recognition of applicant in the particular minority community as a minority through sworn and notarized statements from bona fide members of the community who are clearly disinterested parties. (Because of their special status, proof of Native American status can be accepted only in the form of official documents.)
      - Proof of membership and interaction in recognized minority organizations.

   c. Ownership

      - Articles of Incorporation, By-laws, Partnership Agreements
      - Copies of issued stock certificates
      - Copies of all shareholder agreements including voting trusts, employment contracts and other agreements between owners and company
      - Minutes of initial and most recent Board of Directors meeting
      - Contributions of capital, titles to equipment or other proof of property ownership
      - Federal Corporate Tax returns - Schedule E, Compensation to Officers

d. Control

- Minutes of all Board of Directors meetings (Note election of officers and delegations of authority)
- Copies of all shareholder agreements including voting trusts, employment contracts and other agreements between owners and company
- Copies of any third party agreements
- Examples of documents that would demonstrate management control. For example: copies of contracts, loan agreements, insurance policies, performance bonds, etc. signed by the minority/female owners.
- Resume of work experience of applicant, non-minority owners and officers.

2. Verification On-site

   a. Interview principals

   b. Interview other people with knowledge of firm and its principals. (Including employees)

3. Reports

   a. Report of document review.

   b. Report of on-site review.

   c. Above reports should conclude

      (1) Ownership

      (2) Operational Control

      (3) Managerial Control.

Attachment B

GUIDELINE QUESTIONS FOR DETERMINING PERSONAL SOCIAL AND ECONOMIC DISADVANTAGE STATUS

(These questions are for use in determining an applicant's social and economic disadvantage status, who is non-minority or whose minority origin is in question.)

1. Are you a resident of a geographic area having long term chronic high unemployment and economic depression? If so, explain precisely how and whether such residence has and is causing cultural, social, or economic disadvantage.

2. Do you have a chronic physical handicap which has restricted and still restricts professional acceptance, employment or business mobility? If so, explain fully.

3. Has your cultural or social background resulted in chronic underemployment, limited educational opportunities or personal deprivation? If so, explain fully.

4. Have you experienced low income status because of apparent discriminatory practices? If so, explain precisely how such discriminatory practices led to your having limited access to needed technical, financial, or management resources and equal opportunity in obtaining contracts.

5. Outline other specific and pertinent examples of chronic social and economic disadvantage not covered above.

Attachment C

PROFILE OF A SUSPECTED FRONT

WOMEN BUSINESS ENTERPRISE

A. RELATIONSHIP TO NON-MINORITY MALE

Either wife, daughter or office secretary

B. EXPERIENCE

1. Either as office secretary for a number of years with no operational or managerial experience

OR

2. Office secretary with secretarial or bookkeeping experience or some administrative experience.

C. EDUCATION

1. High school usually or recent college graduate.
2. Little or no training or education in the firm's field of operations.

D. STOCK OWNERSHIP

1. Gift from husband or father.
2. Distributed among mother and daughter(s) to meet 51% pro forma ownership.
3. Minimal cash outlay.
4. Stock issued but never purchased.
5. Non-minority is 49% stockholder.
6. Transfer occurred subsequent to issuance of DOT's MBE regulations and is effective before application for certification.

E. SALARY

1. Minimal or none.
2. Less than father, husband or former boss.

F. EMPLOYMENT AGREEMENT

None

G. FINANCING

1. By father, husband or corporate loan.
2. Sources of financing are the same as for father, husband, or their firms.

H. DECISION MAKER

Father, husband, or former boss.

I. TECHNICAL ASSISTANCE

Bonding company, insurance company, CPA and Attorney are the same as father, husband or former boss' company.

Attachment C

PROFILE OF A SUSPECTED FRONT DISADVANTAGED BUSINESS

A. RELATIONSHIP TO NON-MINORITY PERSON

1. Former or current employee.
2. Former or current non-minority employer or his agent owns interest in disadvantaged firm.

B. EXPERIENCE

1. Usually lower level field experience, such as gang foreman.
2. No managerial experience. No administrative experience.

C. EDUCATION

1. High school graduate or non-graduate.
2. Little or no training or education in business operations.

D. STOCK OWNERSHIP

1. Minimal cash outlay

   OR

   Loan from non-minority person

   OR

   Stock issued but never purchased.
2. Non-minority is former boss and has 49% stock ownership.

E. SALARY

Less than non-minority person or essentially the same.

F. EMPLOYMENT AGREEMENT

1. Protecting the non-minority person's investment in time and capital.
2. No protection for minority person.

G. FINANCING

1. By non-minority person as corporate loan.
2. Credit based on non-minority's credit.

H. DECISION MAKER

1. Non-minority person.
2. Non-minority person jointly or independently exercises authority in most areas of control.

I. TECHNICAL ASSISTANCE

1. Generally represented by a very high paid Attorney.
2. Has bonding limit well in excess of assets.
3. Knows very little of insurance requirements.
4. Relies on non-minority firm for expertise in meeting technical specifications, preparing bid estimates, equipment, workforce, or office facilities.
5. Contracts are almost exclusively with the same non-minority contractor.

Attachment C

PROFILE OF A SUSPECTED FRONT

CORPORATE SPIN-OFF

A. RELATIONSHIP TO NON-MINORITY PERSON

Former minority person employee.

B. EXPERIENCE

1. With former non-minority corporation as skilled employee.
2. May have some administrative skills.

C. EDUCATION

1. Good technical education.
2. Sometimes a college graduate.

D. STOCK OWNERSHIP

1. Minimal personal investment.
2. Loan from former employer.
3. Former employer usually retains 49% stock ownership.

E. SALARY

1. Continues working for old employer.
2. Part-time effort for new business.

F. VOTING RESTRICTIONS

1. Greater than 51% of stockowners required for quorum.
2. Non-minority person's wife put on the Board of Directors.

G. FINANCING

Usually by former employer.

H. DECISION MAKER

Minority person lacks managerial experience and relies on former employer.

I. TECHNICAL ASSISTANCE

Bonding company, insurance company, CPA and Attorney are the same as corporation owning 49% of alleged MBE.

Mr. MITCHELL. Thank you very much.

First of all, let me congratulate you.

How in the world did you get AGC—the Associated General Contractors—to be so supportive?

Mr. HARTRONFT. We just put it on them, Representative Mitchell.

Mr. MITCHELL. You laid it right on them?

Mr. HARTRONFT. You know, they either play the game, or they get out.

Mr. MITCHELL. OK. Well, certainly your State needs to be commended, because, as you know, we've had difficulties with the Association of General Contractors in other States, and the fact that you've forged a working relationship in that State is indeed commendable.

I'm also pleasantly surprised that you don't have more of a problem with front companies. The only reason I say that is—well, let me go back. I remember when we did the first one under EDA, under the Public Works Administration, and I recall so vividly this blond, blue-eyed, Scandinavian coming in and saying he was black, you know, to try to get a part of the contract. People will do that.

But I thought you would have a particular problem because of the American Indian situation, that suddenly people would go back and claim Indian ancestry. Apparently you're catching that at the front end when they submit the applications? Is that correct?

Mr. HARTRONFT. Yes, sir.

What we are doing—of course, there are no Indian reservations in the State of Oklahoma, even though we have a large Indian population.

Mr. MITCHELL. No.

Mr. HARTRONFT. We are requiring either documentation from tribal leaders that the people are recognized within the Indian community as being Indians or that they have actual Indian tribal roll cards.

Mr. MITCHELL. I made a note of that, because that's the best way to do it. I recall when we had our first experience with set-asides, and folks were coming in saying that they were black, and we asked the black firms to check on them, because generally you know who's real and who's not real in your own ethnic group.

Of course, I had my one clinching question, and that was, "What church do you belong to?" There aren't too many of us that are Lutheran, you know.

Mr. Hartronft. Yes, sir.

I'm probably one of the few caucasians in the State of Oklahoma that does not claim any Indian heritage. However, I do have two sons who are one-eighth Cherokee. [Laughter.]

Mr. Mitchell. OK. I'm still neutral on this mentor-protege concept, and that's not finalized as yet.

You do have minorities that can be prime contractors in the State of Oklahoma, and, under your proposed mentor-protege plan would minority primes have a minority sub as a protege?

Mr. Hartronft. That would be very possible; yes, sir.

Of course, the purpose of the mentor-protege program is to develop more minority contractors into the prime bidding area.

We do not at this time, and we do not anticipate that we would, require prequalification of subcontractors. This will allow, and has always in the past allowed, the minority contractors to operate as primes without going through a redtape process with the State.

Mr. Mitchell. OK. Has the Department of Transportation approved this mentor-protege program?

Mr. Hartronft. We have approved the concept. We have not approved the program as submitted yet. We anticipate that we will within the next 2 to 3 weeks.

Mr. Mitchell. OK. I'll tell you what my concern is. I suppose the concept varies from State to State. However, but in some States this mentor-protege arrangement can pair an experienced big prime firm with a minority sub or a minority little brother, to give them all the training they need. In some States they would say that because the mentor is utilizing a minority woman protege, this participation can be counted as a part of meeting the goal effort.

I have a problem with that, because it may well be that that's just on-the-job training. You know, you've got to make a distinction between whether or not that protege is actually benefiting in terms of dollars or benefiting in terms of experience. If it's not dollars, then it's OJT—on-the-job training—and shouldn't be counted.

Mr. Hartronft. We're going to be very careful about the arrangement between the mentor and protege.

The protege must be an actual firm; the firm must be actually controlled on a day-to-day basis; the minority must have the actual control of the company in all respects; any agreement must allow that protege to submit subcontract bids to anyone who he pleases, not just with the mentor; the mentor may act in an advisory capacity to the protege and give him advice and guidance on putting together financial packages, in the area of bonding, equipment procurement—any technical assistance that he can provide—but they are not tied together in the relationship of a joint venture.

Mr. Mitchell. Yes.

Mr. Hartronft. They are definite, separate firms, and each must be able to operate independently.

Mr. Mitchell. When you have your final product, would you share it with me?

Mr. Hartronft. I certainly will, sir.

Mr. Mitchell. Because in one way it looks good in terms of helping minority firms to make a breakthrough, but I want to make sure all of those little pitfalls are avoided.

The concept basically is sound, I suppose. Much of it depends on implementation.

Congressman Torres.

Congressman Hayes.

Mr. **Hayes**. I noticed in your prepared statement that you identified the major problems impacting upon disadvantaged business participation and performance in your State as those of bonding, financing, and, to some extent, hesitancy in the prime contractor to use firms without an adequate track record.

As you indicated in your dialog with our chairman, in order to overcome these problems, you engaged a minority consultant firm whose job was to set up and to implement guidelines for training programs utilizing the mentor-protege concept.

I was wondering if you could give us the name of the minority consultant hired in Oklahoma?

Mr. **Hartronft**. Yes, sir. That's Freeman and Associates from Tulsa, OK. The principal in that company is Mr. Ray Freeman.

Mr. **Hayes**. Will Oklahoma pair minority primes with minority subs?

Mr. **Hartronft**. We have no objection to pairing minority with minority or a majority mentor with a minority protege.

Mr. **Hayes**. But you haven't done it yet, though?

Mr. **Hartronft**. No, sir.

Mr. **Hayes**. You haven't done it yet.

Mr. **Hartronft**. As I indicated before, we have not implemented the minority protege concept.

Mr. **Hayes**. Are you waiting for approval?

Mr. **Hartronft**. No, sir. In the program as submitted by our consultant, we think there are two or three minor areas that we need to iron out. I have an appointment with Mr. Freeman, Thursday, as soon as I get back, to go over his proposal. As soon as we iron that out, it will be submitted to the Federal Highway Administration for their review, and we anticipate approval.

Mr. **Hayes**. Just one final, overall question. Many of these programs are going to be adversely affected if the current proposed budget cuts, as the administration has laid them out, are put into effect.

Have you looked at Oklahoma's situation to come up with some plan, so that if the worst should happen, and these things do go into effect—and God forbid that they do—could you continue the kind of programs that you are carrying on in the Department of Transportation?

Mr. **Hartronft**. I would make this statement. In prior years, the supportive service funds, both the OJT funds and the MBE funds, we have expended almost entirely outside the department with consultants.

I would anticipate that, with the loss of these funds, the amount expended with consultants would probably decrease, but the activities within the department which are supported solely by State funds would be maintained.

Mr. **Hayes**. No further questions, Mr. Chairman.

Mr. **Mitchell**. Congressman Torres.

Mr. **Torres**. Thank you, Mr. Chairman.

I'd like to ask the two witnesses that we have today—the gentleman, in passing, indicated that there was a problem with non-minority persons claiming to be Native Americans in Oklahoma solely for the purposes of participating in the program.

Could you specifically indicate to me—I didn't quite understand what you meant by that or what was happening there.

Mr. Hartronft. We have quite a number of people in Oklahoma who have Indian heritage and made application as minority businesses. However, with the lack of documentation through either the presentation of tribal roll cards, which is a registration with the tribe, or lack of documented statements from tribal leaders that these people are recognized in the Indian community as Indians, we failed to certify them as minorities.

Mr. Torres. That is the criteria you use in determining that?

Mr. Hartronft. Yes, sir.

Mr. Torres. Would you or Ms. Price want to comment further? Is this a good, hard, fast rule? Are there ways to get around that?

Mr. Hartronft. Bernice, would you like to reply?

Ms. Price. OK.

Basically, I think there is no way to get around it. If you have a tribal roll registration, that's issued usually by the Department of the Interior. You know, they've researched your background to find out whether or not you are of Indian heritage.

Then, if you go the other route, getting statements from the tribal leaders, that's showing that also you've been associating yourself with whatever tribe you're saying you're from. If you're Cherokee, then, you know, you get something from your Cherokee chief, or whatever background it is—or tribe it is, rather.

Mr. Torres. Thank you.

I have no further questions, Mr. Chairman.

Mr. Mitchell. Thank you very much.

I'm keeping a score card up here, A through F. No, I'm not going to tell you. [Laughter.]

Let me say, I'm encouraged by the testimony, because I've really gotten weary of all of these newspaper reports about how terrible these set-asides are.

The testimony that has been presented to us this morning says that the States are doing their job in addressing this particular problem. I'm forced to believe that much of this criticism is an effort to simply smear and discredit programs that certain interest groups just don't like.

I've found nothing so far in the testimony from the States to suggest that there is a lax, indifferent, slothful way of administering the program. This is in sharp contrast to some of the early ones who came in. You were in the room when I talked about one State in particular—unorganized.

But it has been good testimony. Thank you very, very much.

Mr. Hartronft. If I may make one more comment, I would say that Ms. Price has done a yeoman's job in our program.

Most of the applicants that come in for certification come in for a personal interview with Ms. Price at the onset, and many of them are screened out then. She also gives very good advice to those people who are true minority businesses, and I attribute a lot of the success of the program directly to Ms. Price.

Mr. MITCHELL. Congratulations.

Mr. HARTRONFT. Thank you.

Mr. MITCHELL. Our last panel will consist of Mr. Rojas, who is with the National Hispanic Association of Construction Enterprises, and is the national executive director; Mr. Edward M. Danks, the president of the National Indian Contractors Association; and an old, good friend of mine, Dewey Thomas, who is the executive director of the National Association of Minority Contractors.

Gentlemen, thank you very much for being with us, and thank you for your patience in waiting for this opportunity to testify.

We have received testimony from all of you, and please just give us the high points from your testimony rather than reading all of it. We read late at night and early in the morning, so we've had a chance to look at your testimony.

Mr. Rojas, will you lead off, please?

TESTIMONY OF ROBERTO CERVERA ROJAS, NATIONAL EXECUTIVE DIRECTOR, NATIONAL HISPANIC ASSOCIATION OF CONSTRUCTION ENTERPRISES

Mr. ROJAS. Yes, sir.

Good morning, Mr. Chairman, members of the subcommittee, Congressman Torres, Congressman Hayes, fellow colleagues, and ladies and gentlemen.

My name is Robert Cervera Rojas. I'm the national executive director of the National Hispanic Association of Construction Enterprises. Our association was founded in November of 1980 and now represents the interests of approximately 27,000 Hispanics in the construction industry.

We are very pleased to be here today and are very excited to be able to provide testimony on the Surface Transportation Assistance Act.

There are some concerns by NHACE regarding the implementation of the Surface Transportation Assistance Act, specifically section 105(f), subpart D of 49 C.F.R. part 23. That relates to the 10-percent set-aside or goal.

Our efforts to answer the questions of the chairman's letter of February 26 proved somewhat fruitless. We contacted over 51 recipients of Federal aid in the highways at the State level, and only 25 responded.

Regarding the Urban Mass Transportation Administration, we could not get any information, both from the central level or the regional level.

We were provided some statistical data kept here at the central level at the Department of Transportation by the Federal Highway Administration, but, curiously, as you notice in the testimony, we indicate that the data regarding the Hispanic participation was not in accordance one with the other. So we don't know which one actually to follow.

We'll give you one clear example. One of the gentlemen who testified this morning, out of memory, I will say that—indicating the State of Florida, the Hispanic participation in 1983 had reached a level of about $16 million. The data we have from the Federal

Highway Administration indicates only $3 million. So we don't know what the exact figures are.

As I mentioned before, UMTA did not provide us with any data, indicating that the data was not kept in the central offices here in Washington. We had to go to the field; and, due to the tremendous task of going to every UMTA recipient throughout the Nation, we were unable to do that in a short period of time.

So in reviewing the three major areas confronting the Hispanic enterprises and impacting their level of participation, our association concentrated on the following Federal aid highway recipients: The States of Florida, California, Texas, Illinois, and Michigan.

Going specifically to the questions that the committee asked us to respond to, does the certification process adequately identify bona fide Hispanic DBE's? To that, I would have to say no.

Without a uniform certification process adopted by all the DOT recipients of Federal financial assistance, the certification of Hispanic enterprises will continue to be based on the subjectivity of the individual or committees who know little, if anything, of what constitutes being an Hispanic business enterprise.

We're familiar with particular cases, and we included one in our testimony, which proved to be frustrating, in which an individual, being a general contractor with bonding capacity over $3.5 million, takes 6 months to be certified only as a subcontractor, which he cannot even bid, because, being a general, he cannot do that kind of thing.

Certification is a major problem. We receive constant complaints from our membership and our constituency throughout the Nation—delays, being certified in the proper categories as subcontractors versus general contractors—and I think my final recommendations—I will explain what I am referring to right now.

On the technical, financial, and other supportive services, of the 54 Federal aid highway recipients who could have supportive service contracts, only 8 are Hispanic enterprises throughout the Nation. We listed them in our testimony. I don't think we have to go over it. I think we have identified two additional ones.

NHACE, our association, has been informed by its membership that the services provided by supportive service contractors are generally limited, and still Hispanic enterprises that were subcontracting, even if they are proven prime contractors.

Through the efforts of the U.S. Department of Transportation also, some technical, financial, and bonding assistance is made available. That's through the Department's management program.

However, due to the limited resources available for these services, the process of qualifying for these services is a barrier in itself.

In the matter of recruiting, most recruiting of Hispanic enterprises is in construction. NHACE can safely say that from fiscal year 1982 through the first quarter of fiscal year 1985, preconstruction awards were virtually nonexistent—only 92 of the people who reported to us.

Through the last quarter of fiscal year 1985, those Federal aid highway recipients submitting data to NHACE indicated that there were 92 preconstruction awards compared to 2,208 construction awards. Information on the type of preconstruction work was not available.

The restrictions—NHACE has identified the following problems that restrict Hispanic enterprises from participating in the program to the extent warranted by the population and capability.

No. 1, inability to get certified as Hispanic or disadvantaged. It is a preconceived notion that all Hispanics must have a dark complexion, speak broken English, and be barely making it. If you're not, then you can't possibly be a disadvantaged Hispanic.

I would like to make, at this point, a statement not included in here. We have contractors—prime contractors—who are in our association who are in the $50-million-a-year bracket. Of course, they are not disadvantaged. But we have anything in the spectrum from the individuals who have bonding capacity from $1 million to $50 million. Therefore, the idea that the Hispanic cannot participate as a prime, I think, is a fallacy; it shouldn't be continued.

No. 2, the inability to compete as sub or prime. If you are fortunate enough to be asked for a quote, then you subject yourself to bid shopping by the prime. This is a very standard practice. I think all of my colleagues will agree with that.

Recipients are not monitoring the prime's activity as it relates to who has submitted as a sub and who ultimately is the sub. This has created a double list, that you have been talking about all this morning, of awarded contracts, via commitments, versus the actual dollars spent by the grantees.

On the matter of the new Hispanic firms, I was very surprised to realize that only 1,618 firms have been certified as Hispanic DBE's throughout the Nation since fiscal year 1982, when we have a universe that—basically the 1977 census figures were 27,000 Hispanic-owned businesses, and based on the projects that we ourselves made, using the comparison of the U.S. Hispanic Chamber of Commerce, the Hispanic businesses have grown from 220,000 in 1977 to 363,000 in 1983. Therefore, we are projecting that the actual constituency of NHACE that is Hispanic-owned business enterprises in the construction industry is now in the range of about 45,000.

So, it's very sad to see that only 1,600 of our constituents have been certified by the States to perform work in this particular area.

It is really impossible for us to estimate the true impact of the program—that it has had in the Hispanic enterprises because of the data being so schematic, so difficult to obtain.

We do not have to profess all the answers to all the problems faced by the Federal aid highway recipients or UMTA grantees. We do, however, believe that if these entities used good faith efforts in utilizing our services, that of our own central headquarters and all the chapters we have throughout the Nation, hearings like this should not have to continue; they should be a thing of the past.

NHACE intends to continue gathering all these facts and data regarding the impact of this program on Hispanic enterprises regardless, maybe even sometimes the reluctance of the Federal or State officials to actually provide us with information.

Mr. Chairman and committee members, I would like to thank you for this opportunity, but before I finish, I would like to say a basic brief of what we have accomplished in a summary made actually after we submitted our testimony.

Like I mentioned originally, we have concentrated on the States of California, Florida, Illinois, Michigan, and Texas. Out of those totals, we came out that a total of 1,728 Hispanic business enterprises have been certified in those particular five States, compared to 2,318 of all responses we had, out of 25 responses. That represents that 74.5 percent of all Hispanic business enterprises in the construction industry are represented in those five States.

Number of contracts—again, based on those five States, we have 1,152, versus a national total of 3,246.

Number of dollars spent on HBE's—on the five States, $199 million; national level, $475.1 million.

The total number of contracts—we have two States with which we could not get the information, so it's really four States who submitted, and so therefore the statistics won't hold.

The total number of dollars nationwide spent was given to us as $4.903 billion, out of the total reported of $11.776 billion.

The number or percentage of Hispanic contracts obtained was, nationwide, 23.9 percent of all the dollars spent—of the contracts—excuse me—went to Hispanics, with a total dollar amount of—excuse me—4 percent.

With that, I'd like to——

Mr. **Mitchell**. Wait a minute.

Mr. **Rojas**. 23.9 contracts.

Mr. **Mitchell**. Right.

Mr. **Rojas**. Number of contracts, equivalent to 4 percent of the total dollar amount.

Mr. **Mitchell**. Dollar value—OK.

Mr. **Rojas**. With that, I'd like to conclude my testimony, and I thank you.

[Mr. Rojas' prepared statement, with attachments, follows:]

PREPARED STATEMENT OF ROBERTO CERVERA ROJAS, NATIONAL EXECUTIVE DIRECTOR, NATIONAL HISPANIC ASSOCIATION OF CONSTRUCTION ENTERPRISES

Good Morning, Mr. Chairman, Members of the Subcommittee, fellow colleagues, ladies and gentleman.

My name is Roberto Cervera Rojas. I am the National Executive Director of the National Hispanic Association of Construction Enterprises (NHACE). NHACE was founded in November 1980 and now represents the interests of some 27,000 Hispanic construction related enterprises.

It is with extreme pleasure and excitement that I come to present testimony before you today.

The excitement is from having the opportunity to address some very crucial concerns Hispanic Construction Enterprises have regarding the implementation of the STAA of 1982 and specifically section 105(f), subpart D of 49 CFR Part 23.

Our efforts to answer the questions in the Chairman's February 26, 1985 letter proved to be somewhat fruitless, as had been anticipated. Over fifty-one Federal Aid Highway recipients were contacted by letter requesting specific data on Hispanic Business Enterprises participation. As of April 5, 1985, 24 States have responded. Their responses have been attached for the record. In addition, the U.S. Department of Transportation was contacted, more specifically, the Federal Highway Administration and the Urban Mass Transportation Administration.

The Federal Highway Administration (FHWA) provided statistical data for all its Federal Aid recipients for years FY 1983 and 1984. In most cases the statistical data provided by the FHWA did not agree with the data provided by the Federal Aid Highway Recipients. This in it self raises serious concern over the accuracy of each's data.

The Urban Mass Transportation Administration did not provide any data. They informed us that they did not maintain any grantee contract data in Washington, D.C. Any information relating to Grantee contracting activity would need to be obtained from each UMTA Regional Office or directly from each Grantee. Recognizing the monumental effort of contacting each Grantee, we limited our request to the largest UMTA Grantee in each UMTA Federal Region. Data from these Grantees was not available.

In reviewing the three major areas confronting Hispanic enterprises and impacting their level of participation, NHACE concentrated on the following Federal Aid Highway Recipient: Florida

Certification

Without a uniform certification process adopted by all DOT recipients of Federal financial assistance, the certification of Hispanic enterprises will continue to be based on the "subjectivity" of an individual or committee who knows little if anything on what constitutes being Hispanic. We are familiar with particular cases in Florida (see attachment) which prove to be frustrating to the legitimate prime HBE's trying to do business in their particular area of expertise and not in the one they are "designated" by the certifying authorities.

Does the certification process adequately identify bonafide Hispanic DBEs?

NO!!

Technical, Financial and Other Supportive Services

Of the fifty-four Federal Aid Highway Recipients who could have Supportive Services Contractors, only eight have Hispanic enterprises providing services.

Supportive Services Contractors

The following is a list of Hispanic Supportive Services Contractors:

1. New York - Burgos & Associates
2. Texas - Ser-Jobs for Progress
3. South Dakota - Steve Gomez
4. Arizona - Applied Business Concepts
5. California - Century Freeway Tech Associates
6. Nevada - New Ventures, Inc.
7. Washington State - MID Columbia Consulting
8. New Jersey - Resource Development, Inc.

NHACE has been informed by its member that the services provided by Supportive Services Contractors are generally limited and steer Hispanic enterprises towards subcontracting even if they are proven prime contractors.

Through the efforts of the U.S. Department of Transportation some technical, financial and bonding assistance is made available. However, due to the limited resources available for these services, the process of qualifying for these services is a barrier in itself.

Recruiting

Most recruiting of Hispanic enterprises is in construction. NHACE can safely say that from FY 1982 through 1st quarter of FY 1985, preconstruction awards were virtually non-existant (92). Through the 1st quarter of FY 1985, those Federal Aid Highway Recipients submitting data to NHACE indicated that there were 92 pre-construction awards compared to 2,208 construction awards. Information on the type of pre-construction work was not available.

Restrictions

NHACE has identified the following problems that restrict Hispanic enterprises from participating in the program to the extent warrented by their population and capability.

1. Inability to get certified as Hispanic or Disadvantaged. It is preconceived notion that all Hispanics must have a dark complexion speak "broken English" and be barely making it. If you are not, then you can't possibly be a disadvantaged Hispanic.

2. Inability to compete as sub or prime. If you're fortunate enough to be asked for a quote, then you subject yourself to "bid shopping" by the prime. Recipients are not monitoring the prime's activity as it relates to who was submitted as a sub and who ultimately is the sub. This has created the "double" list of contracts awarded via commitments versus the actual dollar expenditures by the grantees.

New Hispanic Firms

NHACE is unable to determine whether these are new firms but we can say that under this program 1,618 Hispanic firms have been certified. This is interesting in that the U.S. Bureau of the Census estimates there are approximately 27,000 Hispanic construction related businesses in the United States.

Total Dollars to Hispanic Enterprises

The attached table illustrates awards to Hispanic enterprises for FY 1982-1985. Since statistical data on contract awards was not collected prior to the STAA of 1982 and ethnic breakdowns was not collected by the U.S. Department of Transportation, it is impossible to really estimate the true impact this program has had on Hispanic enterprises.

NHACE does not profess to have answers to all the problems faced by Federal Aid Highway Recipients or UMTA Grantees. We do however believe that if these entities used "good faith" efforts in utilizing our services and those of our constituents, hearings such as these would become a thing of the past.

NHACE intends to continue gathering facts and data regarding the impact to this program on Hispanic enterprises regardless of the reluctance of some Federal and State official to cooperate.

Mr. Chairman and Committee members. I thank you for this opportunity.

Enclosure 1

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

Ethnic Breakdown for Hispanic Contractors for FY 1983 & FY 1984

REGION	DIVISION	1983 HISPANIC		1984 HISPANIC	
1	HEADQUARTERS				
	CONNECTICUT	12	946.302	17	5.390.257
	MAINE	4	806.556	6	644.395
	MASSACHUSETTS	25	4.263.523	12	1.579.509
	NEW HAMPSHIRE	1	38.500	3	479.579
	NEW JERSEY	33	3.274.290	33	3.234.267
	NEW YORK	153	35.224.396	134	24.438.223
	RHODE ISLAND	3	700.376	2	[illegible]
	VERMONT	0	0	2	140.541
	PUERTO RICO	34	24.638.223	46	40.766.534
	TOTAL				
3	HEADQUARTERS				
	DELAWARE	0	0	5	124.175
	MARYLAND	23	6.229.922	22	833.267
	PENNSYLVANIA	30	948.329	78	4.230.332
	VIRGINIA	1	26.300	3	8.976.625
	WEST VIRGINIA	3	1.120.494	14	1.503.357
	DIST. OF COL.	11	9.366.557	10	5.374.222
	TOTAL				
4	HEADQUARTERS				
	ALABAMA	0	0	3	704.224
	FLORIDA	60	3.846.358	50	3.635.334
	GEORGIA	2	275.098	25	15.332.885
	KENTUCKY	12	541.827	11	1.535.306
	MISSISSIPPI	1	135.675	5	250.365
	NORTH CAROLINA	3	287.046	2	556.274
	SOUTH CAROLINA	0	0	10	1.890.225
	TENNESSEE	7	765.478	18	530.859
	TOTAL				
5	HEADQUARTERS				
	ILLINOIS	102	6.420.164	238	14.689.254
	INDIANA	13	236.682	109	27.997.306
	MICHIGAN	141	13.268.992	164	12.592.568
	MINNESOTA	1	5.100	18	1.765.813
	OHIO	43	4.193.298	46	10.732.689
	WISCONSIN	44	2.066.283	145	4.922.543
	TOTAL				
6	HEADQUARTERS				
	ARKANSAS	1	54.832	17	1.259.205
	LOUISIANA	9	1.213.462	12	4.357.398
	NEW MEXICO	85	8.725.869	112	15.354.120
	OKLAHOMA	3	380.632	0	0
	TEXAS	93	27.137.922	340	48.445.332
	TOTAL				
7	HEADQUARTERS				
	IOWA	14	524.367	65	2.236.492
	KANSAS	21	745.568	48	1.353.689
	MISSOURI	4	242.755	14	584.313
	NEBRASKA	8	112.906	51	3.945.116
	TOTAL				
8	HEADQUARTERS				
	COLORADO	76	[illegible]	97	[illegible]
	MONTANA	8	1.322.525	7	1.363.398
	NORTH DAKOTA	0	0	1	10.300
	SOUTH DAKOTA	12	732.348	8	203.425
	UTAH	30	3.389.304	62	9.121.686
	WYOMING	10	5.652.935	22	1.698.324
	TOTAL				
9	HEADQUARTERS				
	ARIZONA	72	7.335.977	87	11.923.879
	CALIFORNIA	350	32.378.080	564	54.652.314
	HAWAII	0	0	0	0
	NEVADA	6	173.150	25	3.276.385
	TOTAL				
10	HEADQUARTERS				
	ALASKA	3	561.294	20	728.663
	IDAHO	11	164.550	20	970.504
	OREGON	43	7.585.941	76	4.576.165
	WASHINGTON	39	8.395.970	41	[illegible]
	TOTAL				
	GRAND TOTAL	1665	243.148.765	2864	377.219.651

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GPO 929-190

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Enclosure 2

NATIONAL HISPANIC ASSOCIATION OF CONSTRUCTION ENTERPRISES

HISPANIC BUSINESS ENTERPRISES CONTRACT AWARD DATA

FY 1982 - 1985

STATE	# HBEs Certified	$ to HBEs	# Contacts to HBEs	Total $ Awarded	Total # Contracts	# Const. Awards	# Pre-Const. Awards
ALABAMA							
ALASKA							
ARIZONA	84	26,546,000	217	419,831,000	283	217	17
ARKANSAS	14	1,138,000	28	389,496,000	467		
CALIFORNIA							
COLORADO							
CONNECTICUT	No Data						
DELAWARE							
D.C.							
FLORIDA	138	23,865,000	148	637,900,000			
GEORGIA							
HAWAII	14						
IDAHO							
ILLINOIS	65	4,526,682	80	192,090,137	235	78	2
INDIANA							
IOWA							
KANSAS	48	2,902,000	96	469,516,000	910		

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FY 1982 - 1985

STATE	# MBEs Certified	$ to MBEs	# Contacts to MBEs	Total $ Awarded	Total # Contracts	# Const. Awards	# Pre-Const. Awards
KENTUCKY	20	2,543,000	38	56,197,000	430	35	3
LOUISIANA							
MAINE	8	2,291,060	38	163,183,000	246	38	
MARYLAND	62	2,310,091	47	593,309,280	679		
MASSACHUSETTS				-			
MICHIGAN	96	31,900,000	92	929,000,000			
MINNESOTA							
MISSISSIPPI	6	2,016,000		26,405,841	384	79	
MISSOURI							
MONTANA							
NEBRASKA							
NEVADA							
NEW HAMPSHIRE							
NEW JERSEY							
NEW MEXICO							
NEW YORK							
NORTH CAROLINA	3			946,000,000	2776		
NORTH DAKOTA	8	208,000	4	229,582,000	345		
OKLAHOMA	20	191,000		282,018,000			
OHIO							

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FY 1982 - 1985

STATE	# HBEs Certified	$ to HBEs	# Contacts to HBEs	Total $ Awarded	Total # Contracts	# Const. Awards	# Pre-Const. Awards
OREGON	178	15,664,000	164	496,529,000	567		
PENNSYLVANIA	36	199,207625	1087	1,227,703,999	870	1087	9
RHODE ISLAND							
SOUTH CAROLINA	12	1,828,000	8	24,845,000	546	5	3
SOUTH DAKOTA	20	1,674,000	24	195,489,000	322	24	
TENNESSESSE	18	3,709,000	55	71,784,000	254	47	8
TEXAS	729	121,224000	598	2,879,382,000	2139	598	50
UTAH							
VERMONT							
VIRGINIA		2,956,815	2	145,122,307	75		
WASHINGTON							
WEST VIRGINIA							
WISCONSIN	28	6,739,000	198	707,351,000	1075		
WYOMING							
VIRGIN ISLANDS							
PUERTO RICO							
TOTAL	1,618	459,279000	3,003	11,510,814000	13,141	2,208	92

CAZO/ARDAVIN & ASSOC., INC.
General Contractor
Construction Management

RECEIVED APR 1 0 1985

February 5, 1985

Mr. Roberto Cervera-Rojas
NHACE
1625 Eye Street, N.W.
Suite 1002
Washington, D.C. 20006

Dear Mr. Cervera-Rojas:

I am sending you this letter to share my frustrations with you, while I was trying to be certified as a minority contractor for the DOT.

When you suggested that I contact the Omega Group in Miami,the PMC for DOT, so they would handle my certification as a Minority Contractor for DOT, I made the contact and had several meetings with them at their offices. I explained with details all of my operations and capabilities before given a large number of forms to fill. Again I explained in writing the operations and specific capabilities in the forms along with financial information, etc. After a long wait and several visits of DOT and Omega Group personnel to my office the Corporation was certified as a Minority Corporation to do "SUBCONTRACT" for DOT Prime Contractors.

At the time we started this process no one said we had to be "SUBCONTRACTORS" or we would have dropped out of the program all together since we are General Contractors and can not subcontract to Prime Contractors since we are one also. This shows you that all the time, effort and money invested in our part and the governments was for nothing.

Also we were told that Omega Group will assist us in procuring contracts from DOT and after several months of waiting from them and their help, is when we found out that to become a Prime Contractor there were other procedures.

3501 S.W. 8 St. • Suite 204 • Miami, Florida 33135 • Phone: (305) 448-1777

When you listen to these people talking in a seminar, one gets the impression that they are there really to help the minority, that you found someone who really knows the system and cares enough to help, but in my case, what they achieved was to hurt my business by taking my time for something useless and making me distract some money where I will never get a return.

If you ask me Mr. Cervera-Rojas, this program is designed to help a very small minority inside the minorities, if any, and those who run those programs should have a better knowledge of the procedures of the different agencies, so they can help and not hurt us. It is really frustrating to see the efforts that this administration is giving to save money and still offer programs to "HELP" those who need it and to find individuals incapable of even giving the correct information of something they get paid to know.

Please help us be able to take advantage of those programs designed to help us. Let the dicision making people in Washington know of what hispanics go thru-to be able to get the help we deserve.

I am sure you will do all you can to help us. Thank you in advance.

Un abrazo,

Carlos Ardavin

CA/sa

Mr. MITCHELL. Thank you.

We are going to hear from all of the panelists before we raise questions, but let me get on one thing right now.

Ms. Bryant and Major Clark, would you take on the assignment now of looking at the disparity between what Florida has reported and what Mr. Rojas' testimony includes? I want to find out why this disparity exists, and I'd like to get that as quickly as possible—just start there.

Yes, sir; it's all yours.

TESTIMONY OF EDWARD M. DANKS, PRESIDENT, NATIONAL INDIAN CONTRACTORS' ASSOCIATION, ALBUQUERQUE, NM

Mr. DANKS. My name is Edward M. Danks. I'm president of the National Indian Contractors' Association, and we want to thank you for the opportunity to come before this subcommittee, Mr. Chairman and subcommittee members.

We have already submitted our testimony. No. 1 on our list is problems, and perhaps looking at me, you can appreciate our No. 1 problem, and that is, what is an Indian? Obviously, looking at me, I don't fit a stereotype of what an Indian is supposed to be, and that is a real problem.

There are those of us who are obviously, from physical appearances, not Indian who are, in fact, enrolled members and Indians of a tribe.

As we have pointed out in our testimony, the Bureau of Indian Affairs has a very standard, acceptable, recognizable method of identifying who is and who is not an Indian, and we suggest that that definition of an Indian be incorporated into the act. It will solve a lot of those problems.

Second, our other concern that we have is, there seems to be quite a lot of emphasis on certification—that is, proving some minority lineage—rather than enough concentration, in our opinion, on establishing ability and prequalifying a DBE as to the kind of contractor they are or they want to become and what volume of dollar work are they able to handle.

I was in the construction business. I didn't know what an MBE was back in 1973 when I first got into the business, until somebody came along and said, "Hey, Ed, you're an MBE." I didn't know what that was up until that time. I was just out in the fields, digging in the ground, trying to make a living.

I went through EDA, LPW, round 2, as you spoke to earlier. When I was out there by myself in North Dakota in 1974, there were only five of us who were brave enough to say we were Indian contractors.

In the fall of 1977—I think the act came out in October, and in December of 1977, we had 147 Indian contractors in North Dakota, and I sure had a lot of friends all of a sudden.

After that went out, we went back down to about five or six contractors. Now, as a result of this, we've got about 60-some contractors.

But I think in North Dakota they're doing a fairly good job in certifying, at least—establishing who is a disadvantaged business.

But from our perspective, from the true sense of bringing our membership along, 99 percent of them are first generation; 99 percent of our businesses in our national association are first generation.

We feel that it's important for them to work their way into the business. It raises a lot of concerns in our mind to have a first-generation contractor pop out of the chute and within 3 months he's doing $5 million worth of work.

It just does not seem to us that these things are developing slowly enough to bring people along, and we think that there ought to be a little bit more concentration on prequalifying people as to the kind of work they intend to work and a dollar amount.

In North Dakota, for example, and several other States, they do prequalify the prime contractor. We think this is a positive approach. We like to take the positive attitude in that regard in that it gives a person an ability to develop as they grow with this program. We want them around with us 20 years down the road, not maybe after somebody takes a run at us and knocks us out of the saddle with this program. We want them around; we want them to grow and develop.

One of the problems that we really have is that the banking community just does not understand what's going on, or they don't seem to want to understand.

I, personally, met with the banking community in North Dakota, as that's where my home State is, and I said:

> You know, there are several opportunities available for our Native American businesses in North Dakota in this particular program. We need to get some financing. We need to get our people involved in getting some equipment financed,

et cetera, et cetera.

They said:

> You know, you're really crazy putting money in and going out there investing the money that I loan you in equipment, because the front guy down the street, he doesn't have to own nothing, and when he beats you out of the work, you ain't got nothing to pay me back with. So my advice to you is to lease your equipment, to rent your equipment. Let's see if this thing is truly going to be around for a while, so that you can build something.

There is an attitude in the banking, financial community in the Midwest that tends to not encourage our people to truly invest in the construction business until they can see whether or not this thing is going to make it, and that's a very hard problem for us to overcome.

I'll close with another very great concern of ours—my written testimony speaks for itself—that 99.6 percent of our membership that have bonds get them from the Small Business Administration guaranteed program.

Now, we hear rumbles that that thing is in trouble—the Small Business Administration. If that goes out, it is going to wipe out—I guarantee you, it's going to take down the tubes so many of our Native American businesses. We get our bonding from the Small Business Administration.

Because we are in Indian reservations, and one thing and another like that, we have a jurisdictional problem that I'm sure you folks have heard about sometime or another.

The regular bonding community does not want to come on to Federal Indian reservations to work with Native American people because of jurisdiction problems.

Some of us are fortunate; we can get other bonds than SBA-guaranteed; but 99 percent of our people have to have an SBA-guaranteed bond if they're going to work. That's just the way it is.

I'll pass at this point. I want to thank you for the opportunity, and I'll answer what questions I can.

One other thing. We sent out 51 request for information from the various States; we got back 14; that's all we got back. Some people don't keep accurate—some people just don't keep records on Native Americans. Some people do. I want to submit that to you, Mrs. Bryant, later on for distribution to the remainder of the members of the committee.

We didn't get any response from the Bureau of Indian Affairs, although they did call and said, "Ed, we're working on it. When we get it done, we'll get it to you." We didn't get any response from any Federal agency that we wrote to asking for that information.

Now, if they say they didn't get it, I don't know. We got responses from Hawaii, and that's a lot further away than anyplace else.

Thank you.

[Mr. Danks' prepared statement follows:]

PREPARED STATEMENT OF EDWARD M. DANKS, PRESIDENT, NATIONAL INDIAN CONTRACTORS' ASSOCIATION, ALBUQUERQUE, NM

NATIONAL INDIAN CONTRACTORS' ASSOCIATION
(505) 766 6520
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March 27,1985

EDWARD M. DANKS
President
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Board Member
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Board Member

WEXLER & CO. PC
Albuquerque
Certified Public Accountants
for NICA

Congressman Parren J. Mitchell
Chairman
Committe on Small Business
House of Representatives
Congress of the United States
2361 Rayburn House Office Building
Washington, D. C. 20515

Re: Your letter of February 26, 1985, requesting information realitve to the impact of section 105(f) of STAA on the Native American Business Sector.

Dear Congressman Mitchell;

On behalf of the National Indian Contractors Association, I wish to express our gratitude for the oppurtunity to respond to the referenced letter and the kind invitation that you have extended to us for a personal appearance before your committee. We have made our arrangements to be in attendance at the scheduled hearing on April 17, 1985.

In your referenced letter, you pose direct questions and our response to those questions are attached to this letter in the format requested.

Again, thank you for this opportunity.

Sincerely yours,
Edward M. Danks
Edward M. Danks
President

File
CC: Membership
NICA

November 6-8, 1985, Annual Meeting/National Indian Contractors' Workshop, Albuquerque

1. Does the certification process adequately identify bonafide Native American DBEs?

Answer: The certification process for Native American DBE's is two fold. One part of the process is determining what is a bona-fide Native American? Once, that has been determined, than what constitutes a bona-fide Native American business? The certification process seems to vary from state to state. The process seems to work effectively in areas where the Native American Business community is well organized, and where there is a organzied tribal presence. For example, states such as North Dakota, South Dakota, and Montana, where the pre-dominant minority group is Native American, do not seem to have as much problem identifying bona fide Native American DBE's as would a state like Kentucky, where we are not aware of any Indian reservations or any Native American businesses. Every tribe seems to have a different standard for recognizing and enrolling their membership. Some tribes require a certian degree of blood quantum and some tribes, merely require proof of Native American ancestry. From our perspective, if the states would accept the Bureau of Indian Affairs definition of a Native American, at least there would be "common ground" from which to work. The Bureau of Indian Affairs has more experience with the matter of identifying Native Americans, than many states, and their expertise should be utilitzed.

BEST C[illegible]ABLE

Secondly, there seems to be a variety of approaches when it comes to certifying whether a firm is bona-fide or not. In this case, the requirement is that the minority person(s) own and control at least 51% of the firm. Again, every state and government agency, funded in whole or part by the STAA, seem to have an individual approach to determining legitimacy of the firm's operational methods. In our view, the common practice seems to flow along the lines of certifying a firm and then monitoring that firm to see if it is, in fact, a legitimate operation. There are instances that we know of that the firm is flatly rejected, for certification, but that is more the exception than the rule. This problem is particularly true for new firms as opposed to existing firms who have a track record that can be assessed.

Assessing the legitimacy of new firms is by far and away, the most common problem that is shared by nearly every contracting agency, state or federal. It is also, a very great concern of the legitimate DBE and those prime contractors who want to deal with legitimate DBE's. Existing DBE firms must also be reviewed, but with their track records, it is easier to establish their legitimatcy. The over-whelming concern is to prevent or stop "fronting". We believe that for new firms starting in the business, that there should be a dollar limitation ceiling that they would be allowed to contract up to for their first couple of years in business.

We know of various states that apply that process to their prime contract bidders. The states philosophy is that they don't want a prime contractor taking more work than he can reasonably handle. Our philosophy in applying that principle to the DBE is to discourage those who would deliberately contrive to "gobble up" a large portion of the DBE goals before they were able to reasonably handle that amount of work.

Furthermore, in most cases concerning Native American business, the Native American has not been in business before and the Non-Native American is generally the one who has the expertise in the area. We are very concerned that our Native American people are not used as tokens to allow non-DBE's to take work from legitimate Native American business. We want our Native American people to "walk before they run" and deliberately develope their business so that it can survive should the day come when there will no longer be the need for this type of program.

In summary we suggest the following:

A. That the BIA's definition of a Native American be considered when identifying who is or is not a bona-fide Native American;

B. That all DBE's be pre-qualified with a dollar rating as to the amount of work that they contract for in the initial "start-up" years in their business; and

C. We believe that in the certification process there must be language that clearly sets out penalties for those non-minority people who would deliberately set up a minority "front" for the sake of taking advantage of this program. We firmly believe, that the problem of fronting is enhanced by the perception on the part of the non-minority that there are no penalites and that a person can "get away with some big bucks until you get caught". Once that minority gets de-certified, go find another Indian (or other minority) and start over again. For every "front" deal, there is someone behind the scenes. Unless we make the behind the scene people aware of serious consequences, fronting will continue until the program is ruined. Furthermore, if that particular problem is not dealt with, this program does more harm to the legitimate Native American business than it does good.

Question #2. Are States providing adequate technical, financial and other supportive servies to Native American DBEs?
Answer: Several States are attempting to provide technical and supportive services to Native American DBEs. We do not know of any State that has provided any financial service.

Question #3. Are States recruiting Native American DBEs in contruction and preconstruction (lawyers, architects,engineers, and etc.) activities to participate in this program?

Answer: We are not aware of any concentrated effort to recruit these types of Native American DBEs. It has been our observation that these functions are dealt with "in-house" by the various State Highway Departments. The Bureau of Indian Affairs, however, does contract with Indian firms for some of their needs in these areas.

Question #4. What problem areas have been identified by your organization that restrict Native American participation in this program?

Answer: There are several problems. They have practical solutions if there would be a willingness on the part of the various contracting agencies to consider these solutions. For example:

1. Bonding. At present, in most States, any project with a value of $25,000.00 or less does not require a bond. Raise that amount to 75,000.00 and design projects that fit that limitiation.

2. Design of projects. At present, most projects are designed for established, bondable, firms. By nature of the design, the projects are prohibitive for new or most Native American firms. We suggest designing with a mindfull eye toward the capabilities of the DBE.

3. Encourage states to contract maintenance functions with Native American DBEs and allow for a cost share of that function.

There are many other problems, but practical solutions, in our view, is more useful than a litany of the problems.

Questions #5. How many new firms have been created and certified as a result of this program?
Answer: At the time of writing of this response, we do not have an answer for any state but one, North Dakota. Hopefully, by the time of our oral testimony we will have an answer.

Question #6. What is the total amount of monies awarded to Native American DBEs as a result of this program?
Answer: Again, our response is the same as to Question #5. Only North Dakota has responded with that information. We have requested that information from all the states and several federal agencies and have had little success. We do not know the reason. South Dakota has called to let us know that they are working on the answer, but, they are short staffed in their civil rights department and it will take them some time to compile the information. Hopefully, by the time of our oral testimony, we will have more information.

Mr. Mitchell. Thank you. I will make some comments later on. Mr. Thomas, it's good to see you again.

TESTIMONY OF DEWEY THOMAS, JR., EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF MINORITY CONTRACTORS

Mr. Thomas. Thank you, Mr. Chairman.

My name is Dewey Thomas, Jr., and I'm representing the National Association of Minority Contractors, which was formed in 1969. We represent somewhere between 2,500 to 3,000 contractors around the country.

Again, I think our written testimony speaks for itself. I would just like to piggyback on some of the comments that my colleagues have made here today.

The States that you have represented today, I guess I would have to classify them as the exception versus anything else.

Since this act was enacted back in 1982—you know, Mr. Chairman, the sweat and thunder that you have put into this—our association has spent somewhere in the vicinity, between personnel time and direct expenses for travel and other things, over $150,000 in monitoring, trying to assist on the State level, because we know this is where the action is as it relates to this program. The response, I hate to say, has been just about nil on the State level.

Some of the questions that we were asked in 1985 appear to me that if a State is moving down the line and we're nearing the sunset of this piece of legislation, that the questions they're asking in 1985 should have been asked in 1982.

The data retrieval is going to come back to haunt the whole minority business community, because the data retrieval on the State level has been totally inadequate, and we don't know what the real impact is.

You know, yourself, there are many pieces of legislation pending now as relates to infrastructure and that, before this decade is out, we're going to have some very profound legislation relating to infrastructure.

I feel, because of a lack of data that we have been able to ascertain through this program, that that's going to come back to haunt us as relates to structuring anything as relates to infrastructure.

In fiscal year 1986, as the Sun sets on the Surface Transportation Act, all the good dreams we had in 1982 about the impact this was going to have on jobs for minorities, the impact this was going to have on minority business development throughout this country, we know in our association we predicated—some of our growth of our association was predicated on this act. It has not come to be. We have seen no significant increase in membership so far as the road area goes.

Mr. Mitchell. There has been no increase in membership? What do you mean?

Mr. Thomas. In other words, I hear about all of these firms; I hear about all of these contracts that are being let. We sent out numerous mail-outs to the contractors. The information is coming back on a certified list that we get on the State level. We anticipated the growth, just out of road contractors, in our association to be about 20 to 30 percent per year as relates to the Surface Transportation Act. We haven't seen that kind of growth.

Mr. Mitchell. You are saying that you are measuring the success of this program by new members coming into your association?

Mr. Thomas. Either by, if not new members, being able to identify people that we want to cultivate—OK?—to be able to—the things that we're doing on a State level as relates to the road building.

Mr. Mitchell. All right. I'll hold off.

Mr. Thomas. In the response from the States themselves as relates to contractors involved in roadbuilding, we're getting such preliminary questions from States where they're asking us to send them a list of contractors, where it appears to me that there is no real identifiable way that they're going about—some of the States now, and I would say the majority of States—of identifying and outreaching to MBE's.

Fourteen million dollars was let by the Federal Government on a State level to provide technical assistance. Again, we're concerned about the expenditure of that money—where is it going, or who is it going to? what kind of impact is being made in that kind of money?

The other area where we see a very serious problem—and I had the chance just about a month ago to be out in California with one of the smaller associations, the Sign and Traffic Association, where their members are grumbling about, "You talk about 10 percent of a set-aside, but to us it means 100 percent."

Again, I see somewhat of a calculated plan going on that is not a written plan but is a plan to sort of discredit the whole Surface Transportation Act, and what it really stands for, and what it really could do for minority business.

So I think as we move along in the next fiscal year, the thing that we've really got to be concerned about is the coordination of the existing services that we have.

We've got to be concerned about the banking community. It appears to me that when the Governors of the different States, knowing the problems that some of the banks are having around the country—the Governor of a State doesn't in some way try to jawbone with the banking community as relates to the minority business and especially under the Surface Transportation Act.

You're not going to have any movement by the banking community. DOT has a very good program now as relates to rails which is supposed to assist throughout the country.

We feel strongly some modifications and some better utilization of that program is necessary on a more cohesive basis as relates to the Department of Transportation on a national level, and the same thing with their bonding program.

So we feel that if the existing resources that the Federal Government has are better coordinated, if the resources that the State governments have and have been allocated are better utilized, then maybe we can salvage something before fiscal year 1986 as relates to the Surface Transportation Act.

We, too, did a survey, and my office came out about the same. So we figure that—what did you say, 4 percent?

Our's came out about 10 percent. So that's 14 percent.

I don't know if you did it.

Where's the rest? We really don't know.

Mr. MITCHELL. I'm not following you now.

Mr. THOMAS. Roberto mentioned that 4 percent of the contract dollar went to Hispanic contractors.

Mr. MITCHELL. Right.

Mr. THOMAS. OK. I said we've done similar surveys during the whole duration of this act, and we come up with about 10 percent went to black contractors and a small portion of Hispanic contractors that represents our organization. We can't find the rest of these dollars.

Mr. MITCHELL. Yes, well, I'll wait until you finish.

Mr. THOMAS. Am I clear, or am I mixing you up?

Mr. MITCHELL. No, you're not, or maybe I'm not understanding it.

I understand your position, but if you're saying that blacks and Hispanics got about 10 percent, that's meeting what the law required.

Mr. THOMAS. No, no, no. If you use the dollar volume that is reported at 100 percent by all the States throughout the country, I don't meet with a contractor or send out any inquiry unless I ask them definitively, "Have you received any work under the Surface Transportation Act?"

What I'm saying is, the information that we're getting back, 90 percent of them are saying no, and then the dollar volume that we're talking about does not represent the dollar volume that's being reported by the States.

Mr. DANKS. Absolutely.

Mr. MITCHELL. OK. I understand.

Mr. THOMAS. So if we had to go about—I have the list of the States here. Let's take Mississippi. If Mississippi for fiscal year 1985 is reporting $14 million that has gone to minorities, the most of that that we can identify is 14 percent, collectively here.

So I'm saying, where did the other 86 percent go?

Mr. DANKS. We don't have anything——

Mr. ROJAS. Wait a minute. I have to clarify. My 4 percent—or depending on the States—I was just referring to these particular 5 States that we were concentrating on. That's 4 percent of the total amount spent, you know.

Mr. MITCHELL. That's 4 percent of the 5 States?

Go right ahead.

Mr. THOMAS. So there's a mythical 75 percent, somewhere, being floated around that I wish we could identify, because if we could, I think that everybody else would be very happy about that, but we just can't seem to really identify the contractors on the State level that are getting these contracts under the Surface Transportation Act.

One of the things that we feel very strong about—and we laid out several points in our testimony as relates to things that we feel can be done—relates to the whole bonding issue.

We feel very strongly that the bonding issue has to be faced on what we call a bonding readiness—that contractors wait until the eleventh hour, they cannot be pushed in the bag, that you've got to deliver a bond because the job is going to be let within 48 hours.

Each State should undertake a bonding readiness program so that this kind of impact or this kind of short fuse will not be put upon minority contractors.

I'd like to summarize my statement in saying that, again, we anticipated great things from the Surface Transportation Act as related to the whole minority business community.

We feel that the kinds of resources to make that happen somewhat have been in place, but we feel because of a lack of overall coordination, starting from the State level, that this has been part of the overall problem and that if we could do something more on the State level, move it on back up into the Federal level, we can see the kind of impact we're talking about.

As one last example, I want to take the mentor-protege, and I know how you feel; you say you're on the fence, Congressman Mitchell on that.

When the guidelines were completed at the beginning of this year, we sent out to the Governor's office of each State, stating that our association, and we stated why we supported the mentor-protege. We talked about the good arm's distance relationship that should occur, the kinds of things that could happen if this program is run properly.

We feel that it should be mandated for any State that is not reaching their reported goals—that the mentor-protege should be mandated, and not just a guideline for that State.

We have gotten responses from three States that they would like our assistance and that they are putting together something in reference to the mentor-protege program.

So something that we feel could work and could work in the best interests of minority business development I don't think it is even being thought of on the State level.

[Mr. Thomas' prepared statement follows:]

Prepared Statement of Dewey Thomas, Jr., Executive Director, National Association of Minority Contractors

MR. CHAIRMAN AND MEMBERS OF THIS COMMITTEE:

MR. CHAIRMAN, ON BEHALF OF OUR NATIONAL MEMBERSHIP, AND CONSTITUENTS, IT IS A PLEASURE TO APPEAR BEFORE YOU THIS MORNING TO DISCUSSS SECTION 105(f) OF THE SURFACE TRANSPORTATION ASSISTANCE ACT P.L. 97-424. THE NATIONAL ASSOCIATION OF MINORITY CONTRACTORS (NAMC) IS A FULL SERVICE, NON-PROFIT MINORITY BUSINESS TRADE ASSOCIATION, ESTABLISHED IN 1969, TO ADDRESS THE NEEDS AND CONCERNS OF MINORITY CONSTRUCTION CONTRACTORS NATIONWIDE. CURRENTLY, NAMC'S 2,500 MEMBERSHIP BASE COVERS 40 STATES, THE DISTRICT OF COLUMBIA, AND THE VIRGIN ISLANDS, AND IS HEADQUARTERED IN THE NATION'S CAPITAL: AND INCLUDES GENERAL CONTRACTORS, SUBCONTRACTORS, CONSTRUCTION MANAGERS, MANUFACTURES, SUPPLIERS, LOCAL MINORITY CONTRACTOR ASSOCIATIONS, FUNDED TECHNICAL ASSISTANCE ORGANIZATIONS, ATTORNIES, AND ACCOUNTANTS.

NAMC'S TESTIMONY WILL ADDRESS THE AREAS STATED IN YOUR LETTER TO US DATED FEBRUARY 28, 1985. NAMC'S CONCERNS ARE SIMILAR TO THIS COMMITTEE'S CONCERNS. WE ARE CONCERNED WITH THE ACTUAL IMPLEMENTATION OF THE STATED PROVISIONS FOR SECTION 105(f) ON A STATE BY STATE LEVEL. THEREFORE, NAMC'S TESTIMONY WILL ADDRESS THE IMPLEMENTATION, PROBLEMS, AND RECOMMENDATIONS TO OVERCOME SAID PROBLEMS.

PROBLEMS CURRENTLY IDENTIFIABLE BY NAMC

1) **IDENTIFICATION AND OUTREACH TO MBEs**

2) **LACK OF COORDINATION AND/OR CENTRALIZATION OF DOT's SUPPORTIVE SERVICES (i.e. PMC's, BONDING PROGRAM, TECHNICAL AND FINANCIAL ASSISTANCE)**

3) **MBE BONDING SUPPORT THROUGH BONDING READINESS**

4) **ENFORCEMENT OF PENALTY RE: MBE FRONTS**

A BASIC CONCERN OF NAMC IS THAT THE POTENTIAL BENEFITS (JOBS AND MBE DEVELOPMENT) OF SECTION 105(f) OF THE SURFACE TRANSPORTATION ASSISTANCE ACT, WHICH DIRECTS THAT 10 PERCENT OF FUNDS AUTHORIZED BE EXPENDED WITH SOCIALLY AND ECONOMICALLY DISADVANTAGED FIRMS, WILL NOT BE REALIZED BECAUSE OF INADEQUATE

OUTREACH MECHANISMS TO ENCOURAGE MBE PARTICIPATION IN PROJECTS COVERED BY THIS ACT ON A STATE LEVEL. UNLESS ADEQUATE EFFORTS ARE MADE TO INFORM AND ASSIST MBEs TO PARTICIPATE, MINORITY FIRMS WILL NOT BE AFFORDED AN OPPORTUNITY TO FULLY PARTICIPATE AND REAP THE BENEFITS OF BEING QUALIFIED CONTRACTORS IN THE ROAD BUILDING INDUSTRY. IN ADDITION, AN INADEQUATE OUTREACH PROGRAM WILL BURDEN NON-MINORITY CONTRACTORS IN THEIR EFFORTS TO FORM JOINT VENTURES AND/OR SUBCONTRACTS WITH MBEs AS IS THE INTENT OF P.L. 97-424, SECTION 105(f).

RECOMMENDATIONS

THE EFFECTIVE DEVELOPMENT AND IMPLEMENTATION OF AN OUTREACH PROGRAM ALSO REQUIRES TECHNICAL KNOWLEDGE OF THE CONSTRUCTION INDUSTRY AND THE ABILITY OF COORDINATING WITH NON-MINORITY CONTRACT FIRMS AND GOVERNMENT TRANSPORATION OFFICIALS (LOCAL AND STATE). THE NEED FOR AN EFFECTIVE PROGRAM MUST BE ADDRESSED. THIS PROGRAM MUST PROVIDE STRONG COMMUNITY TIES AS WELL AS OTHER RESOURCES NECESSITATING EXPERTISE IN THE CONSTRUCTION INDUSTRY. SUCH A PROGRAM SHOULD BE STRUCTURED TO PROMOTE

MBE PARTICIPATION IN TRANSPORTATION PROJECTS AND POTENTIALLY REDUCE CONSTRUCTION COSTS BY THE DEVELOPMENT OF UNDERUTILIZED RESOURCES.

IN THIS LIGHT NAMC HAS IDENTIFIED THE FOLLOWING STEPS WHICH MAY BE OF ASSISTANCE IN THE DEVELOPMENT OF SUCH A PROGRAM:

- IDENTIFY MBEs WITH THE EXISTING CAPACITY AND/OR DEVELOP THE CAPACITY TO PARTICIPATE ON STATE DOT ROAD AND ROAD RELATED PROJECTS COVERED BY THE ACT,
- KEEP FIRMS ABREAST OF OPPORTUNITIES RELATING TO DIRECT BIDDING ON PROJECTS INTRASTATE, INTERSTATE, AND REGIONALLY,
- KEEP MBE FIRMS ABREAST OF POTENTIAL JOINT VENTURES AND SUBCONTRACTING OPPORTUNITIES
- PROVIDE NON-MINORITY CONTRACTING FIRMS WITH INFORMATION ON MBE FIRMS AVAILABLE FOR JOINT VENTURES AND SUBCONTRACTING OPPORTUNITIES,
- ASSIST MBEs IN OBTAINING PROJECT RELATED WORKING CAPITAL,
- NETWORKING TECHNICAL ASSISTANCE REFERRAL TO MBEs PLUS INFORMATION ON MATTERS SUCH AS COMPLIANCE WITH FEDERAL REQUIREMENTS,
- ASSIST FEDERAL, STATE AND LOCAL OFFICIALS IN THE IDENTIFICATION OF QUALIFIED AND DEVELOPING MBE FIRMS,
- PROVIDE BOTH MINORITY AND NON-MINORITY FIRMS WITH ACCURATE INFORMATION CONCERNING FEDERAL CONTRACT REQUIRMENT REGULATIONS, AND
- MANDITORY UTILIZATION OF THE MENTOR-PROTEGE PROGRAM BY STATES THAT ARE FALLING SHORT OF THEIR ANNUAL DOLLAR GOALS.

CURRENTLY, THERE ARE EXISTING PROGRAMS WHICH CAN ENHANCE PARTICIPATION OF MBEs, HOWEVER, AT THIS TIME FEW OF THESE PROGRAMS HAVE THE FULL NATIONAL NETWORKING CAPACITY, SYSTEMS, AND RESOURCES WITHIN THE MINORITY AND MAJORITY BUSINESS COMMUNITY TO MAKE THE NECESSARY IMPACT.

CONCLUSION

MR. CHAIRMAN:

THIS CONCLUDES OUR TESTIMONY AND RECOMMENDATIONS TO THIS COMMITTEE AT THIS TIME. WE LOOK FORWARD TO CONTINUING OUR WORKING RELATIONSHIP WITH YOU AND WILL KEEP OUR MEMBERSHIP AND CONSTITUENCY APPRISED OF YOUR PROGRESS.

IF YOU OR THE MEMBERS OF THIS COMMITTEE HAVE ANY QUESTIONS, I WOULD BE HAPPY TO ANSWER THEM.

Mr. Mitchell. Thank you.

I have one or two very quick comments.

First of all, in terms of the identification of minority businesses, we have asked, and will continue to ask, that when the States submit their reports, they give us a list.

The names of the minority businesses—let's take my State of Maryland, for example—are clearly listed, and the dollar amount that is associated with that minority business.

So I guess what we'll have to do is spot check some of those States where you have particular concerns, and we haven't gotten to them yet, to match up the minority business with the dollars. That should be general public information. There's no reason why it can't be shared with you.

So we will do that. I'm concerned about the disparity, obviously.

Mr. Danks, just a couple of comments for you. You're quite right on the bonding issue and the banking issue, and that's why we are fighting very hard to retain SBA.

Mr. **Danks**. It's our lifeblood in Indian country.

Mr. **Mitchell**. Yes—with its guaranteed loan program and the direct loan program.

We know that there is an overall reluctance to lend to minority businesses, whether they be Indian, or Hispanic, or black, and we just don't want to see the dismantling of the program.

Finally, just one quick comment from me. I did indicate that we're going to take Florida as the case study—since there are dramatic differences between what the State reports and what you report. I want to find out why this disparity exists. Obviously, one reason might be that the State is counting the executed contract, not the actual dollar award, which is the wrong way. I've stressed that's the wrong way of doing it. But even that would not sufficiently explain the great disparity.

So when we look at that State as our first case study, we'll be glad to share that information with you.

Finally, we are caught in a real dilemma in terms of certification. Many, many guys complain about the certification process. The dilemma comes in, if you get too lax on it, you see what can happen.

On the other hand, if you're too tight, there's an inordinate delay in certification. I'm not at all sure how you resolve that problem, that's a catch-22 situation almost.

If you don't have tight certification, then you open the door to fronts. If it's too tight, then you close the door to legitimate minority businesses.

Yes? Do you want to comment on that?

Mr. **Danks**. Yes, if I could, Mr. Chairman. One quick point.

I know of several firms in our area—minority firms—that have been decertified. The Native American has been decertified. But in every instance that we looked at, there is a nonminority behind it.

Now, that person was slapped on the hand and told, "Now, you don't do that any more, or, if you do, we're going to make you make it up here."

So the minority is kicked out of the program; he's done for; he's pretty much been shamed out; he'll never come back again, or whatever. But the nonminority, the guy that put the deal together, that had the savvy to put it together, gets spanked a little bit, and he goes on down the road.

To our perspective and to our way of thinking, if the bee is put on, as the fellow from Oklahoma said, the man behind the scene, we would help a lot of this front business.

Mr. **Mitchell**. That's why, if you will recall, I was asking why there is no provision for prosecution under general public law at the State level? A wrong has been committed.

Mr. **Danks**. Absolutely.

Mr. **Mitchell**. My impression is that it's laxness on the part of the States and, indeed, the Justice Department, to not prosecute under general law.

Congressman Torres.

Mr. **Torres**. Thank you, Mr. Chairman.

I appreciate your comments on the SBA matter, because, as you know, we've been joining with you. Mr. Hayes and I were in California, in Fresno and Los Angeles, listening to testimony from so many witnesses that talked about this very critical question that's before the small business community, especially contractors—building contractors—who depend very much on SBA for bonding capacity, et cetera.

Moreover, I'm happy that you have asked the staff to look into these discrepancies in terms of figures, and I'll be anxiously waiting to see that disparity between what Florida reports and what the testimony here provided today.

But along that line, I'd like to ask Mr. Rojas a question. He mentioned in his statement that there were census figures or census estimates.

Why do you think, Mr. Rojas, there is such a discrepancy in the number of certified Hispanic firms? I think you cited 618, and the U.S. Bureau of the Census estimates that there are approximately 27,000. That is a great disparity.

Mr. ROJAS. What I mentioned is that there are 27,000, according to the census for 1977—27,000 plus—27,100 and something—Hispanic-owned businesses in the construction sector.

Now, based on our projections, which I mentioned were based on the same months that the U.S. Hispanic Chamber of Commerce used—as a matter of fact, we used the identical growth pattern—we estimate now there are 45,000 Hispanics in the construction sector. Those are unofficial. The official puts it at 27,000, which is reported by the Department of Commerce.

Out of the data we have been able to obtain, only 22,318 HBE's total have been certified. Remember, only 25 States have reported.

I went back, and I said, "Out of that total, 1,728 were certified by these 5 States."

So we don't really know what the total number of HBE's nationwide are certified at present; we don't know that. We couldn't find the information.

What I'm saying is, if that is 27,000 legitimately recognized by the U.S. Government Hispanic-owned businesses in the construction sector, how come the States only report even double, only 4,000 are certifiable? Let's put it in those terms.

Mr. MITCHELL. In five States?

Mr. ROJAS. In 5 States, it's only 1,700.

Mr. MITCHELL. OK.

Mr. ROJAS. Did that answer your question?

Mr. TORRES. Thank you.

No further questions, Mr. Chairman.

Mr. MITCHELL. Congressman Hayes.

Mr. HAYES. This may have already been answered, but it's one question that I want to direct to Brother Danks and you.

Since the enactment of section 105 of the Surface Transportation Assistance Act in 1982, has there been a noticeable increase in the number of Native Americans, DBE's, or black DBE's? Have you got any figures to indicate whether or not there has been any increase?

Mr. THOMAS. No. As I mentioned, we have seen no significant increase in either inquiries from contractors or being able to identify them as we move around the country through our affiliates and chapters, through my own hitting—I would say I have hit just about 40 of 50 States since it has been enacted, and we have seen no really significant increase or any kind of contribution that we expect these companies to make not only to their community but also to the minority business community. We just have not seen it.

Mr. MITCHELL. Congressman Hayes, will you yield to me for just a moment?

We have worked for so many years, we share the same objective, and yet as we have broken this thing down, looking at the various States at which we have looked, there has been an increase, a fairly significant increase, in the number of black businesses.

Now, that's why I raised a question with you about the criteria you were using. If you talked about membership in the National Association of Minority Contractors as a criterion, then that's a very bad criterion to use.

You also talked about those that you would want to reach out to, to join you—to join your association. Again, I have trouble with that kind of criterion.

You know, small business guys are fiercely independent anyway, and most of them are not joiners, except in your situation.

Mr. ROJAS. Well, actually, when I mentioned the 27,000, they're not our members; they're just assisting.

Mr. MITCHELL. That just buttresses the point I want to make. This is not denigrating what you're saying.

Mr. THOMAS. Yes. I understand what you're saying.

Mr. MITCHELL. But I think you make a serious mistake to use those two kinds of criteria for measurement when that is coupled with the increase that we have documented ourselves, that has been documented through the Department of Commerce and, indeed, SBA.

OK. I'm sorry. Thank you for yielding to me.

Mr. HAYES. Did you want to respond?

Mr. DANKS. Mr. Hayes, yes.

The growth in Native American business has been astronomical. You can't believe it. I'm not going to say if it's all a square deal or not.

For example, we're a national Indian contractors' association, and we got a report from Arkansas that says in 1984 they awarded $8.3 million to Native Americans, and in 1983 they awarded $5.9 million to Native Americans.

So I quickly called up our executive director, and I said, "Hey, I don't know any Indian contractor from Arkansas. Do we have any members?" He said, "Not a one."

Mr. MITCHELL. But that doesn't mean that they aren't there.

Mr. DANKS. That doesn't mean they aren't there.

We've had a tremendous growth in what seems to be Native American enterprises, but we have a hard time finding them.

Mr. THOMAS. That's the thing, and I understand what you're saying; that's a very selfish way we're looking at it as an organization.

Mr. MITCHELL. Yes.

Mr. THOMAS. But we also compile a list of contractors across the country, and, right now our list, I would say, is somewhere around

7,500 construction contractors across the country that have been in business for a couple of years, you know, that we have.

So even though they are not members of our association, we still declare them as constituents, and we mail out our newsletter to them, and we provide other things, but they're not on the books as dues-paying members.

In other words, what I'm saying is that we have not seen any significant increase in what we call our category 3 new and emerging firms in there.

It's very hard for us to identify and to try to even match them for some numbers that we can provide some accurate numbers to people.

Mr. **Mitchell**. I see.

I don't want to take up your time.

Mr. **Hayes**. Thank you, Mr. Chairman. I don't have any further questions.

I'm just a little bit disturbed. This whole problem of unemployment really permeates the minority community, and this agency of the Government, the Small Business Administration, is fighting for its existence now, and in each of the areas that we've gone into, we've asked the question as to how many jobs these small contractors are responsible for.

I can't help but feel, if there's an elimination of this agency, this is going to have an adverse impact on the employment situation in the total minority community, which is already astronomically high.

So that is one reason why I intend, as one Congressman, to fight for the survival of this agency. I just want to make that as a comment.

Mr. **Mitchell**. Thank you. Thank you all very much.

Mr. Thomas, I'll get back to you to compare some data, because it almost defies logic that if there is this enormous increase in Indian businesses, enormous increase in Hispanic businesses, that there has not been an increase in black businesses.

It sort of goes against everything that I know as I move around the country. I used to know the major players in Baton Rouge, in New Orleans, and other places. Now I don't know all of them, because their numbers have increased so much. We need to get together and look at how you are measuring this, and we'll share our data with you, so that maybe we'll get a little better picture.

Mr. **Thomas**. OK.

Mr. **Mitchell**. I thank all of you for your participation. You've given us more work to do, but that's expected; that's what we're here for. Thank you very much.

Mr. **Danks**. Thank you very much, sir. Thank you very much.

Mr. **Rojas**. Thank you.

Mr. **Thomas**. Thank you.

[Whereupon, at 12:10 p.m., the subcommittee adjourned, to reconvene subject to call of the Chair.]

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REVIEW OF THE 10-PERCENT SET-ASIDE PROGRAM (SECTION 105(F)) OF THE SURFACE TRANSPORTATION ASSISTANCE ACT OF 1982

WEDNESDAY, JUNE 5, 1985

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON SBA AND SBIC AUTHORITY, MINORITY ENTERPRISE AND GENERAL SMALL BUSINESS PROBLEMS, COMMITTEE ON SMALL BUSINESS,

Washington, DC.

The subcommittee met, pursuant to notice at 9 a.m., in room 2359-A, Rayburn House Office Building, Hon. Parren J. Mitchell (chairman of the subcommittee) presiding.

OPENING STATEMENT OF CHAIRMAN MITCHELL

Mr. MITCHELL. Good morning.

Today the Federal Highway and the Urban Mass Transportation Administrations and the general counsel for the Department of Transportation will present testimony to the subcommittee on the implementation of the Disadvantaged Business Enterprise Program.

This is the third in a series of oversight hearings conducted by this subcommittee in an effort to determine the impact the implementation of section 105(f) has had on the disadvantaged business enterprise sector.

That section, as you know, mandates that not less than 10 percent of all funds authorized to be appropriated for federally subsidized highway and transportation improvement projects in all the States and the District of Columbia over the 4-year period of the law will be expended with small business concerns that are owned and controlled by socially and economically disadvantaged individuals.

In 1982, when I introduced the amendment—and I am delighted that I did—there was a need for affirmative action, the word beloved by the administration. There was a need for affirmative action on behalf of socially and economically disadvantaged businesses. There was a need then, and there is a need today, for such a measure to help increase the level of participation of these businesses.

The question is—and I think every person that ever gets a piece of legislation passed wants to know what has been the impact. That is the question today: What difference has this program made? How can this program make the greatest amount of difference and satisfy the intent of Congress in voting for this measure?

I have spent more time on this than I think any other project. It is administered by the States, and we intend to visit all 50 States. We brought the States in in groups of three to five at a time. We received testimony from 12 States and the District of Columbia. From this testimony we expect to gauge the impact of the legislation thus far and to try to find out what the impediments are to maximum participation of eligible disadvantaged businesses in this program.

So far, evidence indicates that criticisms aimed at the 10-percent set-aside amendment by certain special interest groups and trade associations affiliated with the construction industry are totally unwarranted. Here, again, it is my belief that selfish interests dictate a need on the part of these groups to monopolize activity in these areas and to continue to deny minority entrepreneurs equal opportunities in the marketplace.

The fact that this 10-percent share of participation is apportioned among all of the eligible minorities participating in the program means that the percentage level for each group falls somewhere closer to 1 or 2 percent for each participating group. So, it's not just blacks. It's not just Hispanics. It's not just Aleuts getting the lion's share. It is apportioned out.

We are now prepared to have the DOT general counsel, Mr. Marquez, Administrator Ray Barnhart and Administrator Ralph Stanley address concerns raised by the States and the trade associations who presented testimony during the April 17 hearing concerning certain barriers that continue to limit DBE participation in this program. Also, we want effective means to eliminate those barriers.

As I understand it, the Republicans are having a caucus or some sort of meeting this morning. I do not expect many of those Members to be here. I am delighted that some of our Democratic Members are here. We, too, have a Democratic caucus at 9:30, if I recall.

I would ask first before we hear the witnesses whether Mr. Smith has an opening statement he would like to make, and Congressman Addabbo.

Mr. Smith. No, thanks. I am glad that the chairman called this meeting. I will be anxious to hear what develops.

Mr. Mitchell. Congressman Addabbo.

OPENING STATEMENT OF HON. JOSEPH P. ADDABBO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

I thank the chairman for conducting aggressive oversight hearings on the implementation of the 10 percent MBE Set-Aside Program under the Surface Transportation and Assistance Act of 1982.

These hearings are sorely needed because for so long we have seen that Federal agencies have failed to take minority business programs seriously. As a result, these programs tend to be reluctantly and slowly implemented and almost always subordinated to some other superficial agency need.

I look forward to hearing how the Department of Transportation has overcome the problems previously identified by this subcommittee, which have plagued the overall success of the MBE Set-Aside Program.

Mr. Mitchell. Thank you.

Congressman Hayes from Illinois has just joined us. Congressman Hayes, do you have an opening statement this morning?

Mr. Hayes. Thank you very much, Mr. Chairman. But in the interest of time, I do not have an opening statement.

Mr. Mitchell. Thank you, gentlemen, for being here.

Mr. Marquez, we will be delighted to hear from you. All three of you were very kind—I am sorry. I didn't know you popped in on me. I understood that your party was having a caucus this morning. Do you have an opening statement of any kind you would like to make?

Mr. Gallo. No, I don't, Mr. Chairman.

Mr. Mitchell. Thank you.

Gentlemen, you were very kind and cooperative in providing us copies of your written testimony. Therefore, rather than read the entire testimony, will you make just the salient points or highlights of your testimony. The entire testimony will be submitted for the record.

Yes, I was in Las Vegas with you. We were there on business. I was under general surveillance, I think, by friends and foes in Las Vegas, and I did not go near one of those one-armed bandits. I did not have you under surveillance, so I don't know what you did.

Please, sir, proceed with your statement.

TESTIMONY OF JIM J. MARQUEZ, GENERAL COUNSEL, DEPARTMENT OF TRANSPORTATION

Mr. Marquez. Thank you very much, Mr. Chairman. First of all, let me thank you for the invitation to appear here today. We are pleased to be here.

I will not read my entire formal statement, however, I will paraphrase from it if I might.

We are pleased to be here to discuss the Department's DBE program, which, of course, implements section 105(f) of the Surface Transportation Assistance Act of 1982. As you mentioned, I have with me this morning Mr. Ray Barnhart, who is accompanied by Mr. Quick; Mr. Ralph Stanley, who is accompanied by Mr. Owens; Mr. Greg Wright, who is our Acting Director of the Office of Small and Disadvantaged Business Utilization; and Mr. Bill Hudson, who is the Director of our Office of Civil Rights.

Let me, first of all, say that the Department does remain committed to implementing section 105(f) and to improving the participation of DBE's in our highway and mass transit programs. I would like this morning, if I might, to describe the overall participation of DBE's in our highway and transit programs in fiscal year 1984. I will describe these activities in the aggregate, if I might, and Mr. Barnhart and Mr. Stanley will go into much greater detail respectively.

First of all, I think with reference to participation——

Mr. Mitchell. May I interrupt for just a moment, because sometimes we get a little hazy on these things.

I know the invitation was sent to the Secretary. You are here representing the Secretary. Is that correct?

Mr. Marquez. Yes, I am.

Mr. Mitchell. And you will be speaking for the Secretary. Is that correct?

Mr. Marquez. That is correct.

Mr. Mitchell. The three of you?

Mr. Marquez. That is correct.

Mr. Mitchell. Thank you.

Mr. Marquez. First of all, looking at DBE participation and looking at all the highway and UMTA activity combined, the Department expended over $1½ billion of approximately $11.4 billion, or 13 percent, of contract funds subject to section 105(f), with DBE's during fiscal year 1984. We have submitted for the record much more detailed information on DBE participation in the highway program for fiscal year 1983 and fiscal year 1984 and in the transit program for fiscal year 1984.

With reference to the enforcement of eligibility requirements, the Department does and continues to believe that effective enforcement of the DBE Program's eligibility requirements is a key part of ensuring that the program will achieve its purpose. Keeping ineligible fronts out of the program is essential to maintaining the program's integrity and credibility.

The first and most important part of this responsibility falls upon the State and local governments receiving financial assistance from the Department, who must screen the applicants for DBE certification. This screening process has succeeded in part in preventing the participation of a substantial number of ineligible firms.

The Department, as you know, maintains a certification appeals process to ensure that decisions by recipients are conducted fairly and in accordance with the DBE Program's eligibility standards. The appeals process which is conducted by the Department's Office of Civil Rights, with the assistance from the general counsel and the inspector general, conducts the process.

In fiscal year 1983 and fiscal year 1984 and through the first quarter of fiscal year 1985, the Office of Civil Rights received 392 appeals from firms that felt that they had been wrongly denied certification or decertified by FHWA and UMTA recipients. The Office of Civil Rights has decided 209 of these appeals. Of this number, only 15, or about 7 percent, were decided in favor of the appellants. Insofar as the cases appealed to the Department are representative of recipient certification actions, this low percentage of reversals suggests that recipients' judgment that firms should not be certified are generally reliable.

The Office of Civil Rights also receives a smaller number of what we call third-party complaints. A third-party complaint is an allegation by a DBE firm or another party that a firm which a recipient has certified does not in fact meet the eligibility criteria and should be decertified. The Department has received nine of those complaints. Two of those have resulted in determinations that the firm in question should be decertified. One has resulted in a determination that the firm was properly certified. The rest of those cases are pending.

The participation of ineligible firms in the DBE Program is an abuse of the program and could sometimes involve actual fraud as well. Consequently, and on occasion, the inspector general's (IG's)

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office is asked to independently investigate matters related to DBE certification.

As of May of this year, the inspector general has been involved in 76 DBE cases over the history of the program, 57 of those cases having been opened in fiscal year 1984 and fiscal year 1985.

The inspector general has made referrals in 35 of those cases. Some have been referred to the Department of Justice, to U.S. attorneys, or to State prosecutors. Of those cases that have been accepted from the inspector general, one of those coming out of a joint investigation with the Rhode Island attorney general's office has resulted in the indictment of two corporations and three corporate officials on charges of forgery, larceny, and conspiracy.

In addition, there has been a small but an increasing number of civil or criminal court actions taken in front cases by the recipients on their own initiatives. For example, UMTA recipients initiated two actions in fiscal year 1983 and 12 in fiscal year 1984. In a case related to the highway program, the New Mexico State attorney general's office recently conducted an investigation that has led to the indictment of several firms and individuals for violations of State law.

The authority to take action under the Department's suspension and debarment regulation rests with the operating administrations. FHWA has recently initiated suspension action under this rule against two firms indicted in Rhode Island for involvement in front situations. Also, a number of cases, including some referred by the inspector general, remain under consideration by the operating administrations. It is important to remember that finding that a firm is ineligible is not enough to subject a firm to suspension or debarment. The operating administration in question would have to be able to show that a firm had engaged in conduct indicating a serious lack of business integrity, as an example, a firm knowingly served as or made use of a front. This showing can sometimes be difficult to make.

What is the Department doing about removing barriers? I think the program itself, the system of overall goals, contract goals and good-faith effort to meet those goals, is an important part of our effort to remove barriers to the DBE participation in our programs.

The operating administrations have taken substantial initiatives to help remove barriers to effective DBE participation in their own programs. I am sure Mr. Barnhart and Mr. Stanley will elaborate upon those. The Office of the Secretary also has a role in that effort.

Our Office of Small and Disadvantaged Business Utilization is presently funding 14 program management centers, more commonly known as PMC's and one Native American business enterprise project, which are located across the country. The PMC's provide assistance by identifying DBE's and performing outreach, marketing, referral, follow-up, and technical assistance. Technical assistance is composed of bid proposal development, cost estimating, loan packaging and assistance in obtaining bonding.

Since September of 1983, the PMC's have referred information on over 15,000 contracting opportunities to DBE firms. Some 717 contracts have resulted, worth $131 million to the firms involved. In addition, the PMC's have responded to 510 requests for technical assistance and submitted or helped to prepare 115 requests for financial assistance to potential sources of funding.

As you know, DBE's historically have had difficulty in obtaining surety bonds and financial assistance. To assist DBE's in overcoming such barriers, in December 1982 the Department created bonding and short-term loan programs with Fireman's Fund Insurance Co. and the Atlantic National Bank. These programs have been successful in providing DBE's with the bonding and financing needed to perform transportation-related projects.

Over the past several years and ending in December 31, 1984, 59 bond approvals were made. Final bonds have been issued to cover 27 contracts with bonded amounts nearly $2.5 million. Other approvals include 23 bid bonds and 9 applications for bond readiness. Also, from December 1982 to March 1985, 39 short-term loans have been made for approximately $5 million. These loans were made to DBE's at the current prime rate. This is an important feature of the Department's short-term loan program, since many other loan programs make loans available to DBE's only at interest rates above the prime.

The Department has devised a recordkeeping system which was begun and put into use last year. This new form is being used by all of the operating administrations. Mr. Barnhart and Mr. Stanley will discuss those recordkeeping programs in greater detail with you.

We believe the Department's day-to-day program efforts to ensure that recipients set and meet adequate goals, our enforcement efforts, and our efforts to help remove barriers to DBE participation have resulted in a well-balanced and successful effort to carry out section 105(f) of the Surface Transportation Assistance Act of 1982. We will continue in our efforts to improve the program and to correct any problems which we may detect or any problems which are brought to our attention in order that the program can do the best possible job for achieving the objective.

[Mr. Marquez' prepared statement follows:]

Prepared Statement of Jim J. Marquez, General Counsel, Department of Transportation

Mr. Chairman and members of the Subcommittee:

Good morning. I am Jim J. Marquez, General Counsel of the Department of Transportation. I am pleased to be here today to discuss the Department's disadvantaged business enterprise program, which implements section 105(f) of the Surface Transportation Assistance Act of 1982. With me this morning are Mr. Ray Barnhart, Administrator of the Federal Highway Administration; Mr. Ralph Stanley, Administrator of the Urban Mass Transportation Administration; Mr. Gregory Wright, Acting Director of the Office of Small and Disadvantaged Business Utilization; and Mr. William Hudson, Director of the Departmental Office of Civil Rights.

The Department of Transportation remains committed to implementing section 105(f) and to improving the participation of disadvantaged business enterprise (DBE) in our highway and mass transit programs. I would like to begin this morning by describing the overall participation of DBEs in our highway and transit programs in Fiscal Year (FY) 1984. I will describe this activity in the aggregate; Mr. Barnhart and Mr. Stanley will go into greater detail for the highway and transit programs, respectively.

DBE Participation

Looking at all FHWA and UMTA activity combined, the Department expended over one and one-half billion dollars of approximately 11.4 billion dollars, or 13 percent, of contract funds subject to section 105(f), with DBEs during FY 1984. We have submitted for the record more detailed information on DBE participation in the highway program for FY 1983 and FY 1984 and in the transit program for FY 1984.

Enforcement of Eligibility Requirements

The Department continues to believe that effective enforcement of the DBE program's eligibility requirements is a key part of ensuring that the program will achieve its purpose. Keeping ineligible, "front" firms out of the program is essential to maintaining the program's integrity and credibility.

The first, and most important, part of this responsibility falls upon the state and local governments receiving financial assistance from the Department, who must screen applicants for DBE certification. This screening process has succeeded in preventing the participation of a substantial number of ineligible firms. The other witnesses will discuss further the working of this screening process in the highway and transit programs.

The Department maintains a certification appeal process to ensure that decisions by recipients are conducted fairly and in accordance with the DBE program's eligibility standards. The appeals procecss is conducted by the Departmental Office of Civil

Rights, with assistance from the General Counsel's and Inspector General's offices. Through Fiscal Years 1983 and 1984 and the first quarter of FY 1985, the Office of Civil Rights received 392 appeals from firms that felt that they had been wrongly denied certification or decertified by FHWA and UMTA recipents. The Office of Civil Rights has decided 209 of these appeals. Of this number, only 15 (or about seven percent) were decided in favor of the appellant firms. Insofar as the cases appealed to the Department are representative of recipient certification actions, this low percentage of reversals suggests that recipients' judgments that firms should not be certified are generally reliable. Thirty cases were closed without decision (mostly because they were withdrawn or became moot), and 153 cases are still pending at this time.

In addition to appeals from firms who believe they have been wrongly denied certification, the Office of Civil Rights also receives a smaller number of what we call third-party complaints. A third-party complaint is an allegation by a DBE firm or another party that a firm which a recipient has certified does not, in fact, meet the eligibility criteria and should be decertified. The Department has received nine such complaints. Two have resulted in determinations that the firm in question should be decertified, one has resulted in a determination that the firm was properly certified, and the rest are pending.

The participation of ineligible firms in the DBE program is an abuse of the program, and could sometimes involve actual fraud as well. Consequently, the Inspector General's office is often called upon to independently investigate matters related to DBE certification.

As of May of this year, the Inspector General has been involved in 76 DBE cases over the history of the program, 57 of them having been opened in FY 1984 and FY 1985. Inspector General investigations have significantly assisted the Office of Civil Rights in deciding certification appeal or third party complaint cases, have resulted in recommendations to the operating administrations to consider suspension or debarment action, and, in some cases, have resulted in referrals to the Department of Justice, U.S. attorneys, or state prosecutors for consideration of criminal prosecution.

The IG has made such referrals in 35 cases. Ten of these referrals are still pending, eleven have been declined, and fourteen have been accepted. One of the acceptances, coming out of a joint investigation with the Rhode Island Attorney General's office, has resulted in the indictments of two corporations and three corporate officials on charges of forgery, larceny, and conspiracy. The case involves a certified DBE that formed a joint venture with a non-minority firm and obtained over $10 million in contracts. However, the indictment charges that the joint venture subcontracted its DBE contracts to a second-tier non-minority contractor and falsified its records to make it appear that it was in compliance with the DBE program.

In addition, there has been a small, but increasing, number of civil or criminal court actions taken in "front" cases by recipients on their own initiative. For example, UMTA recipients initiated two such actions in FY 1983, and another 12 in FY 1984. In a case related to the highway program, the New Mexico state Attorney General's office recently conducted an investigation that has led to the indictment of several firms and individuals for violations of state law.

The authority to take action under the Department's suspension and debarment regulation rests with the operating administrations. FHWA has recently initiated suspension action under this rule against two firms indicted in Rhode Island for involvement in "front" situations. Also, a number of cases, including some referred by the Inspector General, remain under consideration by the operating administrations. It is important to remember that finding that a firm is ineligible is not enough to subject that firm to suspension or debarment. The operating administration in question would have to be able to show that a firm had engaged in conduct indicating a serious lack of business integrity (for example, that the firm knowingly served as or made use of a front). This is a showing which may often be difficult to make.

Removing Barriers to DBE Participation

The DBE program itself -- the system of overall goals, contract goals, and good faith efforts to meet those goals -- is an important part of our effort to remove barriers to DBE participation in our financial assistance programs. The inertia of recipients and prime contractors who are used to dealing with the same non-disadvantaged firms they have always dealt with, and the lack of participation by DBE firms in the informal networks of communication which are important to all contractors, were significant barriers to DBE participation which this administrative program is intended to help overcome.

The operating administrations have taken substantial initiatives to help remove barriers to effective DBE participation in their own programs, which Mr. Barnhart and Mr. Stanley will elaborate upon. The Office of the Secretary has a role in this effort as well.

The Office of Small and Disadvantaged Business Utilization is presently funding 14 Program Management Centers (PMCs), and one Native American Business Enterprise project, which are located across the country. PMCs are a national network of professional management consulting firms which are supported by the Department for the purpose of providing assistance to DBEs in pursuit of business opportunities with the Department and its financial assistance recipients. PMCs provide assistance by identifying DBEs, and performing outreach, marketing, referral, follow-up and technical assistance. Technical assistance consists of bid proposal development, cost estimating, loan packaging and assistance in obtaining bonding. This program, since its establishment in FY 1982, has consistently provided valuable assistance to DBEs involved in business opportunities resulting from the STAA of 1982.

Since September 1983, the PMCs have referred information on over 15,000 contracting opportunities to DBE firms. Some 717 contracts have resulted, worth $131 million to the firms involved. In addition, the PMCs have responded to 510 requests for technical assistance and submitted or helped to prepare 115 requests for financial assistance to potential sources of funding.

To encourage good results from the PMCs efforts, the Office of Small and Disadvantaged Business Utilization has established a series of monthly minimum performance goals for the PMCs. For example, each PMC is asked to make 10 on-site visits to grantees or prime contractors, visit 10 DBE firms, refer information on 25 contracting opportunities, process two financial assistance and surety bonding assistance requests, and so forth. The PMCs must explain in their monthly reports all instances of inability to meet these goals. This process aids in our oversight of the PMCs performance.

As you know, DBEs historically have had difficulties in obtaining surety bonds and financial assistance. To assist DBEs in overcoming such such barriers, in December of 1982, the Department created bonding and short-term loan programs with Fireman's Fund Insurance Companies and the Atlantic National Bank. These programs have been successful in providing DBEs with the bonding and financing needed to perform transportation-related projects.

Over the two years ending in December 31, 1984, 59 bond approvals were made. Final bonds have been issued to cover 27 contracts with bonded amounts nearly $2.5 million. Other approvals include 23 bid bonds and 9 applications for bond readiness (i.e., a kind of "prequalification" for bonding made by the surety company before the DBE firm has obtained a particular contract). Another bright note is that the Federal government does not pay administrative costs to Fireman's Fund and there have been no losses in the bonding program. Also, from December, 1982 to March 1985, 39 short-term loans have been made for approximately $5 million. These loans were made to DBEs at the current prime rate. This is an important feature of the Department's short-term loan program, since many other loan programs make loans available to DBEs only at interest rates above the prime.

Recordkeeping

The Department devised, and began to use last year, a new uniform reporting form for its DBE/MBE/WBE program. This form is being used by all DOT operating administrations. The form provides data on actual contract awards and on committments for contracts that will be executed in the future. The form also allows us to break down DBE participation by racial and ethnic groups. OMB approved the form through March of this year under the Paperwork Reduction Act, and is currently re-evaluatig the form in response to our request for longer-term approval. Mr. Barnhart and Mr. Stanley will discuss recordkeeping in their programs in greater detail.

Summary

We believe that the Department's day-to-day program efforts to ensure that recipients set and meet adequate goals, our enforcement efforts, and our efforts to help remove barriers to DBE participation have resulted in a well-balanced and successful effort to carry out section 105(f) of the Surface Transportation Assistance Act of 1982. We will continue to strive to improve the program, and to correct any problems which we detect or which others point out to us, in order that our program can do the best possible job of achieving the objective we all share.

I would now like to turn the discussion over to Federal Highway Administrator Ray Barnhart.

Mr. MARQUEZ. I would like at this time, Mr. Chairman, if I might, to turn it over to Mr. Barnhart, who has a short prepared statement.

Mr. MITCHELL. I think, unless there is some objection from my colleagues, it would be best to hear from all of the witnesses.

Mr. ADDABBO. I just wanted to ask one question——

Mr. MITCHELL. Sure.

Mr. ADDABBO. Because we may have to leave.

Mr. MITCHELL. I know.

Mr. ADDABBO. You mention on page 3 of your statement: The Office of Civil Rights has decided 209 of these appeals. Of this number, only 15, or about 7 percent, were decided in favor of the appellant firms. Insofar as the cases appealed to the Department are representative of the recipient certification actions, this low percentage of reversals suggests that the recipient's decision that firms should not be certified are generally reliable.

The Office of Civil Rights, is that within your office, or is that the President's Commission on Civil Rights?

Mr. MARQUEZ. It is within the Office of the Secretary of Transportation.

Mr. ADDABBO. So, therefore, all they're doing is rubber stamping what you have already done. So when you tell us 15 out of 209, it's not surprising, because, again, the right hand is doing what the left hand tells it to do.

Mr. MARQUEZ. With all due respect, that is not correct, Congressman. The recipients are normally the State highway departments. The State departments of transportation are the ones that either certify or decertify a contractor. If that contractor feels that he has been wrongly decertified, for example, he can then appeal to us, the Office of Civil Rights in the Office of the Secretary. We then in turn either affirm the State's action, the recipient's action, or we can reverse it.

What we have found is that only in 7 percent of those cases have we felt that the State's judgment in a decertification has been incorrect.

Mr. ADDABBO. That is about the same percentage of cases that the administration's civil rights department is reversing, which is not protection of civil rights.

Thank you, Mr. Chairman.

Mr. MITCHELL. Thank you.

Mr. Barnhart.

TESTIMONY OF R.A. BARNHART, ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

Mr. BARNHART. Mr. Chairman and members of the subcommittee, all but three States achieved or exceeded their goals for 1984. One of those three States fell short by only two-tenths of 1 percent. After reviewing the information provided by those three States, we concluded that the reasons they could not achieve their goals were in fact beyond their control.

For example, one of the States had thought it had achieved its goal and then found out too late in the year that one of the DBE firms that it had counted was not legitimate, and therefore their contract amount was deducted from the total goal. So, they failed to meet it.

During 1984, the States obligated more than $9.34 billion on federally assisted contracts. Of that amount, $1.2 billion was awarded to DBE's as prime contractors or subcontractors. In other words, approximately 13 percent of our contracting dollars actually went to DBE's. This pace has continued during the first half of fiscal year 1985. The States have thus far actually awarded prime contracts in total amounting to about $4.87 billion, which amount includes some 5,000 contracts valued at $525 million for DBE firms. This represents a nationwide participation of approximately 11 percent for the first two quarters.

Two of your concerns as expressed earlier involve barriers to DBE participation. One of those concerns was regarding bonding. Bonding has generally been regarded as a major problem. Federal highway recently joined with UMTA to study the bonding issues. We found unused bonding capacity available even in other Government bonding programs. One of the problems as we see it is the apparent lack of bonding readiness on the part of some DBE firms. The solution to this problem may be a program geared to assisting DBE's in meeting the industry standards for securing a bond.

We are preparing a report for submission, by the way, to the House Appropriations Committee on this particular issue. The report reveals that there is quite a bit of unused bonding capacity in existing Government bonding programs. In DOT, the Office of Small and Disadvantaged Business Utilization already has a Department-wide bonding program which, we believe, is underutilized.

We are working to complete our report and should have it submitted to the Hill very shortly.

Unrealistic bonding requirements have also been considered a problem. None of the States requires subcontractors to secure bonding, but prime contractors understandably often require the subcontractors to provide bonding to them. The ability to meet bonding requirements has long been recognized as a valid measure of the qualifications of construction contractors. To the extent that these requirements have become unwarranted obstacles to qualified DBE's, we are working with the States and the surety industry to try to overcome that barrier. Some States are already addressing this problem by easing the requirement for bonding requirements on smaller contracts, that is, contracts below $100,000 or $200,000 or $300,000 to perhaps a half million dollars would not be required to have a bond.

You were also concerned about the problems that DBE's have in generating operating and growth capital, another obstacle to participation. Some States have tried to solve the problem by requiring prime contractors to share mobilization costs, where appropriate, with the subcontractors with the DBE's and to ensure expedited progress payments to subcontractors. Other States have actually offered programs to offer financial assistance to DBE's.

The FHWA is making available to all of the States the data that we collect from States that have had successes in these particular areas.

The supportive services programs, as funded by Federal Highway, has helped DBE's to understand the States' contract award processes. It truly has improved communications on contracting opportunities, provided technical assistance, and established networks among DBE's and sources of contracts.

Many programs in the States have been quite effective, considering short-term accomplishments by the number of DBE contract and subcontract awards. We recognize that there is room for improvement in all of those areas.

Last January, we released guidelines which permit mentor-protege relationships to be established between established firms and developing DBE's under a clearly defined arrangement that can be monitored. It is spelled out in black and white. It can be monitored to avoid front operations. I would like to give you a little background on that, if I might.

We conducted some seven different seminars around the country with prime contractors with the States and with minority contractors. Many of the problems identified at those meetings related to the certification process, to minority contractor preparedness, and to qualifications. One major complaint was that minority contractors were concentrated in specialty areas and were unable or were reluctant to move into the mainstream contracting fields.

As a result of those sessions, we then developed the mentor-protege guidelines because we recognize that many successful majority contractors got their starts with help from established contractors. We thus structured our mentor-protege guidelines to permit new DBE's to gain the necessary industry experience and existing DBE's to expand into new areas.

Our prime concern was that the guidelines would not be an invitation to establish fronts. The guidelines therefore contain a number of safeguards.

We are not requiring, incidentally, the States to use the mentor-protege approach. It is simply a voluntary program which is available to the States. But if they do employ this option, they must develop written programs implementing the guidelines as approved by Federal Highway Administration.

These guidelines are consistent with DBE regulations. Further, our guidelines emphasize that the States must scrutinize the mentor-protege arrangements closely to ensure the DBE participants are independent entities that fully meet all of the eligibility criteria for the DBE Program. We believe that this can be effective in developing better and broader participation in the construction industry by new and developing DBE firms.

On certification, each State has a certification process. At our urging, the States have been focusing more attention on their verification procedures. Their aggressive efforts have resulted in the discovery of many fronts and frauds as well as other firms where the control by minority owners was not sufficient to permit the classification as DBE firms.

These figures illustrate, I think, very well this point. The States took new certification actions on more than 6,000 firms during 1984 and the first quarter of 1985. By new certifications, I mean cases where a State certifies a firm for the first time. These actions can include firms that are certified in another State and which are then being certified for the first time in this particular State. In all, the States have denied DBE certification to some 906 applicants. That means about 15 percent of all the firms that applied for DBE classification were denied certification.

We also require the States to review the certified firms annually. Recertification reviews were made on 4,803 firms in fiscal year 1984 and the first quarter of 1985, with 403 firms being denied recertification, or about 8 percent of those firms were denied recertification. In the same period, the States decertified an additional 359 firms following reviews or investigations that were conducted outside the normal annual review process.

Because we recognize that there are pluses and minuses to this program, we have awarded a contract for a DBE impact study. This is not to identify simply the horror stories. This is to get an objective evaluation of the pluses and minuses associated with the program so that we can better understand its impacts on the allied industries of the construction industry, limited not only to highway construction, to pavement and concrete, but to design, to engineering, et cetera.

We are looking forward to the results of that 9-month study, which was awarded just recently at a cost of $186,000.

Mr. Marquez has already talked about enforcement efforts on the part of the Department of Transportation. Federal Highway has also taken steps to insure compliance with 105(f). First, we have encouraged the States to strengthen their contract administration and their goal setting. Further, more States now have more stringent good-faith effort requirements than they had in the past. Many States are refusing to award contracts to low bidders who have not met a strong good-faith test.

As indicated by the general counsel, the States have begun to take aggressive action against fraudulent companies that abuse the program. I would like to add that Federal Highway has suspended two firms in Rhode Island, as he indicated, as well as the principals of the corporations, based upon indictment, not conviction. And that is a serious step to take, but we felt we have had no other alternative because of the lengthy legal process and our desire to protect the integrity of the program.

The Federal Highway Administration is ready to use its suspension and debarment authority whenever the available evidence is sufficient to support the action and its disclosure will not jeopardize ongoing criminal prosecutions.

Finally, your invitation letter asked for statistical data. The FHWA has adopted a quarterly report system which accurately shows the number, the dollar value, and the work type of all Federal aid prime contracts and subcontracts going to disadvantaged and women-owned business enterprises, as well as the number of contracts going to each racial or ethnic category. The data is not limited to construction contracts but includes consultant contracts and other professional and service-type contracts as well.

Specifically, you asked for the names of firms, which States they are from, and the dollar amounts for each award to those firms. Frankly, we cannot provide that information because we do not collect it. It would require a special request of the State and involve a tremendous amount of paperwork because it involves between

10,000 and 12,000 contracts, for instance, last year. We would be pleased to give the subcommittee the information we have. We would attempt to seek other information if you so desire.

In concluding, I can only add that we recognize there are very legitimate and real problems remaining with the administration of this program. We have been striving to overcome the problems and have many of them under control. I think the program is being conducted in compliance with the law and that participation by legitimate disadvantaged businesses has been greatly enhanced.

Thank you, Mr. Chairman.

[Mr. Barnhart's prepared statement follows:]

PREPARED STATEMENT OF R.A. BARNHART, ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

Mr. Chairman and Members of the Subcommittee:

I regret a previous commitment kept me from attending the April 17 hearing. However, I am familiar with the testimony presented and hope to respond to some of the questions you raised. I want to begin, though, by giving you the status of DBE participation in the Federal-aid highway program.

All but three States achieved or exceeded their approved DBE goals for FY 1984, and one of the three States fell short by only 2/10 percent. After reviewing information provided by the three States, we concluded that the reasons they could not achieve their goals were beyond their control. For example, one State thought it had achieved its goal but found out too late in the year that some "DBE" firms used were not legitimate.

So far, I have been talking about commitments, which we use in measuring goal achievements because highway contracts can span several years. Knowing the Subcommittee's interest in awards, not just commitments, I want to tell you about contracting dollars. During FY 1984, the States obligated over $9.34 billion for federally assisted contracts. Of that amount, over $1.2 billion was obligated to DBEs as prime contractors or subcontractors. In other words, 13 percent of our contracting dollars went to DBEs. This pace continued during the first half of FY 1985. The States obligated over $4.87 billion including over 5,000 contracts valued at $525 million for DBEs. This represents nationwide DBE participation rate of nearly 11 percent in these two quarters. This information shows that subcontract commitments are being kept. We'll be providing further data on these figures for the record.

Now I want to turn to the areas you mentioned in your invitation letters. I will address each briefly, bearing in mind that General Counsel Jim Marquez has already touched on some of them in his statement.

Barriers To DBE Participation:

Two of your concerns involved barriers to DBE participation, namely bonding and lack of capital. Let's begin with bonding.

Bonding:

Bonding has generally been seen as a major problem. We recently joined with UMTA to study bonding issues and found unused bonding capacity available, even in government bonding programs. One of the problems that we face is the apparent lack of bonding readiness on the part of some DBEs. The solution to this problem may be a program geared to assist DBEs in meeting the industry standards for securing a bond. We are preparing a report for submission to the House Appropriations Committee concerning DBE bonding.

The report reveals that there is unused bonding capacity in existing Government bonding programs. The Office of Small and Disadvantaged Utilization in DOT already has a Department-wide bonding program, which is also underutilized. At present, we believe this program should be allowed to develop more fully. We believe any additional resources should be used to enhance the existing programs and make them responsive to DBE highway contractor needs. Further, several individual States have already initiated bonding assistance programs, and we are sharing information on these efforts with other States which may wish to follow this lead.

We are working with UMTA and the Secretary's Office to complete the report. We will send this Subcommittee a copy for the record when the Department releases the report.

Unrealistic bonding requirements have also been considered a problem. None of the States requires subcontractors to secure bonding, but prime contractors often understandably include such a bonding requirement in subcontracts. The ability to meet bonding requirements has long been recognized as a valuable measure of the qualifications of construction contractors. To the extent that these requirements have become unwarranted obstacles to qualified DBEs, we are ready to work with the States and the surety industry to overcome this barrier. Some States are already addressing this problem in another way by easing the requirement for bonding on smaller contracts, thus encouraging greater DBE participation.

Lack of Capital:

You were also concerned about the problems that DBEs have in generating operating and growth capital, another barrier to participation. Some States have tried to solve the problems of operating capital by requiring prime contractors to share mobilization costs and to expedite progress payments to subcontractors. Other States have initiated programs to offer financial assistance to DBEs. This will allow DBE subcontractors to secure needed operating capital both at the beginning of the job and during its progress, not just after the work is done. The FHWA has made the States aware of these and other innovative procedures that will help them increase DBE participation.

Generating growth capital involves complex financing decisions necessarily based on individual circumstances, market conditions and prospects. We are encouraging supportive services contractors, as part of their management assistance, to give DBEs advice on developing their growth capital. Mr. Marquez has already discussed the Department's short-term loan assistance through the Atlantic National Bank. In addition, we have offered guidance to participants in our Regional DBE Conferences on the availability of loans and other financial management assistance.

Technical Assistance and Supportive Services:

The General Counsel has already commented on the assistance provided by the Program Management Centers funded by the Department. In addition, the Surface Transportation Assistance Act of 1982 authorized FHWA to finance supportive services programs to help "minority businesses . . . achieve proficiency to compete, on an equal basis, for contracts and subcontracts." Since this Administration came into office, FHWA has allocated a total of $30.5 million for this program, including $8.4 million for FY 85.

The supportive services program has helped DBEs understand the States' contract award processes, improved communications on contracting opportunities, provided technical assistance, and established "networks" among DBEs and sources of contracts. Many innovative approaches have been implemented, including workshops, seminars, one-on-one consulting, and assistance from State highway personnel.

The programs in some States have been effective, considering short-term accomplishments by the number of DBE contract and subcontract awards. However, we also recognize that in other States there is room for improvement. During our in-depth reviews of State DBE programs, we are emphasizing supportive services and the activities, accomplishments, and progress of DBEs under this program.

We are hoping to start seeing more prime contract awards to DBEs and subcontracts in mainstream highway work or complex projects, real indications of long-term effectiveness of our programs. But for now, much of the subcontract work awarded to DBEs involves specialty areas. With our new DBE reporting system and in-depth reviews, we'll be in a better position to monitor the types of highway work contracted to DBEs.

I want to turn now to a few other concerns related to those mentioned in the Subcommittee's letters of invitation. I will begin with mentor-protege relationships because they offer another form of technical assistance.

Mentor-Protege Initiative:

In January, we released guidelines permitting mentor-protege relationships which allow established firms to help DBEs under a clearly defined arrangement that can be monitored to avoid front operation. Let me give you a little background in this area.

Since the September hearings, FHWA has completed a series of seven regional conferences and workshops. They gave us an excellent opportunity to hear from minority and nonminority contractors, State highway officials, supportive services contractors, and trade associations. The conferences themselves provided a needed catalyst for the resolution of problems at the State level.

Many of the problems identified at these meetings related to the certification process, to minority contractor preparedness, and to qualifications. Another major complaint was that minority contractors were concentrated in specialty areas and were unable or reluctant to move into mainstream contracting fields.

As a result of these sessions and discussions with many State and local officials and contractors, FHWA developed mentor-protege guidelines to give more definition to practices that were emerging in different parts of the country. Recognizing that many successful contractors got their start with help from established contractors, we structured our mentor-protege guidelines to permit new DBEs to gain necessary industry experience and existing DBEs to branch out into new areas.

Our primary concern was that the guidelines not be an invitation to establish fronts. The guidelines, therefore, contain a number of safeguards. We aren't requiring the States to use the mentor-protege approach. It's voluntary. But if they do, they must develop written programs implementing the guidelines for approval by FHWA.

The FHWA guidelines provide this opportunity within the framework of our DBE regulations. Further, our guidelines emphasize the States must scrutinize mentor-protege arrangements closely to ensure DBE participants are independent entities that fully meet all eligibility criteria of the DBE program.

We expect this initiative to increase the DBE participation in all contracting areas. We will not permit the mentor-protege initiative to be used by ineligible firms to gain unintended benefits from the DBE program.

During the course of the regional conferences and workshops, we found concern about the certification process, and a complaint that minority contractors were concentrated in specialty areas and were unable or reluctant to move into mainstream contracting fields. Let's look at the certification process and then specialty contracting.

Certification:

We require the States to have a certification process in which the firms claiming DBE status furnish the information. Verifying the information is the problem. At our urging, States have been focusing more attention on verification, and their aggressive efforts have resulted in the discovery of fronts and frauds, as well as other firms where the control by the minority owners was not sufficient to permit certification.

A few figures will illustrate my point. The States took "new certification actions" on 6,084 firms during FY 1984 and the first quarter of FY 1985. By "new certification actions," I mean cases where a State certifies a firm for the first time. These actions may include firms certified in one State which are being certified for the first time by another State. In all, the States have denied DBE certification to 906 applicants. This means about 15 percent of all firms that applied were denied certification.

We also require the States to review certified firms annually. The States conducted recertification reviews of 4,803 firms in FY 1984 and the first quarter of FY 1985, with 403 firms denied recertification -- or about 8 percent of those reviewed. In the same period, the States decertified 359 firms following reviews or investigations conducted outside the normal process.

The problem of fronts and frauds has been one of the most frustrating aspects of the DBE program. You can bet we will continue to work with the States to enhance the program's integrity.

The FHWA's data on DBE participation does not show the length of time firms have been in existence. Consequently, we are unable to tell how many contracts have been received by newly established DBE firms, as opposed to DBE firms in general.

DBE Impact Study:

Over and over since passage of section 105(f), we have heard the complaint that established non-DBE specialty contractors are losing business - even being driven out of business - by new DBE firms benefitting from the law. This concern was one of the main reasons we awarded a contract to undertake a 9-month study of the impacts of the DBE program on both minority and nonminority contractors, the highway construction industry as a whole, and the Federal-aid highway program in particular. This study will finally give us some reliable numbers that, combined with other data and experience gathered thus far, will help us improve the the section 105(f) program. Of course, I'll provide a copy of the report to the Subcommittee.

Enforcement:

The Department has a direct role in enforcing section 105(f). Mr. Marquez' statement has already addressed the general issues involved in enforcement. I want to add a few brief comments on enforcement efforts by the FHWA and the States.

The FHWA has taken several steps to assure compliance with section 105(f). First, we have encouraged the States to strengthen their contract administration and goal setting procedures. Further, many States now have more stringent good faith effort requirements to ensure that contractors who do not achieve their DBE goals have done everything possible to meet the goals. The States are also refusing to award contracts to low bidders who have not made a good faith effort to meet project goals. We will continue encouraging the States to strengthen their DBE participation provisions and requirements, and to review the subcontracting opportunities in areas other than specialty fields.

As indicated by the General Counsel, the States have begun to take aggressive actions against fraudulent companies that participate in the program. I would like to add that FHWA has suspended two Rhode Island firms, as well as the principals of the corporations, and is considering similar action with respect to the New Mexico defendants. As more investigations are completed, the FHWA is ready to use its suspension and debarment authority whenever the available evidence is sufficient to support the action and its disclosure will not jeopardize ongoing criminal prosecutions.

Recordkeeping Methods:

Finally, your invitation letter asked for statistical data. The FHWA has adopted a quarterly report system which accurately shows the number, dollar value, and work type of all Federal-aid prime contracts and subcontracts going to disadvantaged and women-owned business enterprises, as well as the number of contracts going to each racial/ethnic category. The State highway agencies supply the information and monitor it to verify its accuracy. The data is not limited to construction contracts, but includes DBE/WBE consultant contracts and other professional and service-type contracts.

Specifically, you asked for names of firms, which States they are from, and dollar amounts for each award to these firms. We cannot provide this information because we do not collect it. In order to provide this information to the Subcommittee, we would have to make a special request to each State. In addition to presenting problems with OMB's paperwork requirements, the task would be monumental because it would involve between 5,000 and 6,000 contracts a year. However, we would be pleased to give the Subcommittee the information we have available.

In concluding, I will only add that we recognize there are problems remaining with administration of this program. We have been striving to overcome these problems and have many of them under control. I believe the program is being conducted in compliance with section 105(f) of the Surface Transportation Assistance Act of 1982 and that the participation by legitimate disadvantaged businesses in the Federal-aid highway program has been greatly enhanced.

This concludes my prepared statement. I will now turn the discussion over to Mr. Stanley, but will be pleased to answer any questions you may have after his presentation.

Mr. MITCHELL. Thank you, sir.
Mr. Stanley.

TESTIMONY OF RALPH STANLEY, ADMINISTRATOR, URBAN MASS TRANSPORTATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY GREGORY WRIGHT, ACTING DIRECTOR, OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION; WILLIAM HUDSON, DIRECTOR, DEPARTMENTAL OFFICE OF CIVIL RIGHTS; ROBERT OWENS, DIRECTOR, UMTA OFFICE OF CIVIL RIGHTS; AND ED QUICK, DIRECTOR, FHWA OFFICE OF CIVIL RIGHTS

Mr. STANLEY. Thank you, Mr. Chairman. I am pleased as well to be here this morning to report on UMTA's efforts and accomplishments in implementing the provisions of section 105(f) of the 1982 Surface Transportation Assistance Act.

As you may recall, when I appeared before this subcommittee last September, I reported that in fiscal year 1983 the DBE participation in UMTA contracts was 14.3 percent, well over the 10-percent statutory requirement. We now have data from fiscal year 1984 that indicate an even higher DBE participation level. Of a total of just under $2 billion, $293 million, or 14.9 percent, was awarded to DBE's by UMTA grantees in fiscal year 1984.

I want to emphasize that these and other amounts I will be discussing reflect actual contract awards representing real business use.

In assessing those figures, I am also pleased to report that there is a high DBE participation by our grantees in every region of the country. Not one of our regions reported a participation rate as low as 10 percent. It is also significant that in our direct procurement program fully 27 percent of our procurement dollars were awarded to 8(a) contractors, the highest of any agency in the Department.

I am also confident that our participation will remain at high levels in the current fiscal year. Of our more than 400 grantees, only 2 have requested approval of goals of less than 10 percent.

We are taking a variety of steps to administer and implement section 105(f). A basic step is our continual review of grantees' programs to ensure that all applicable components are incorporated and addressed.

To ensure that grantees, including transit vehicle manufacturers, are implementing all facets of their programs and attaining their goals for the current fiscal year, we will emphasize onsite reviews. To date, in fiscal year 1985, we have conducted 17 such reviews of grantees and 2 of transit vehicle manufacturers. By the end of the fiscal year, we anticipate having reviewed at least 20 additional grantees and 4 additional transit vehicle manufacturers. During fiscal year 1984, 12 onsite reviews of our grantees were conducted.

We also continue to provide technical assistance to insure implementation of section 105(f). During this past fiscal year, we issued an internal order within UMTA that clearly identified for the first time the responsibilities and authority of both UMTA headquarters and our regional offices as well as the procedures to follow in administration of our program.

We also issued for the first time a circular to every one of UMTA's grantees that provides definitive guidance and assistance on the components that must be included in the grantees' programs.

Throughout the fiscal year, UMTA will monitor grantees' efforts to use DBE's by reviewing their quarterly progress reports. These reports have been computerized in UMTA headquarters so that data regarding each recipient's most current use of DBE's is readily available. To date, information contained in those quarterly progress reports has not covered ethnicity. We have requested our grantees to collect this information beginning with the third quarter of this fiscal year.

With regard to our efforts to remove barriers to DBE participation, I would like to say that, in my experience, minority participation in contracting opportunities in the transit industry presents barriers similar to those in other industries, namely, a tendency to rely on established business relationships, various technical and managerial deficiencies, and the lack of financing on the part of DBE's, including access to the bonding market.

We have continued to use section 20 of our human resources program to address these barriers. UMTA, like Federal Highway, has conducted a series of regional DBE grantee conferences in fiscal year 1984, which had, as one principal purpose, the expansion of the grantee-contractor network to include DBE's.

As part of our overall DBE support program, I have encouraged and UMTA has asked transit operators throughout the country to develop local projects of technical and managerial assistance for DBE's that are performing on industry contracts. We have provided financial support for those efforts through section 20. Since enactment of section 105(f), we have approved 10 separate awards for projects involving technical and managerial assistance to DBE's. These projects involve programs that are implemented locally, statewide, and regionwide. We have also used section 20 funds to help develop national programs in support of the purposes of section 105(f). The series of DBE grantee conferences I referred to earlier was partially funded under this section.

I believe the subcommittee is also aware of UMTA's efforts to establish a demonstration bonding program to assist DBE's in transit construction. While we have not yet resolved all implementation issues of that program, I am confident that UMTA will begin to issue bonds in that program before the end of this fiscal year.

With regard to certifications, we require each grantee to determine the eligibility of firms as DBE's. We do not in our data collection routinely collect information about the number of actual certification actions taken. However, in response to the subcommittee's request for this data, UMTA surveyed a sample number of grantees and from that developed national estimates.

We estimate that our grantees certified about 6,500 DBE firms in fiscal year 1983 and approximately 9,000 in fiscal year 1984. Of those firms, we would estimate one-third of those certified in fiscal year 1983 and 6,500, or two-thirds, of the firms certified in fiscal year 1984 were newly established firms. Grantee DBE officers also gave the impression that section 105(f), in addition to creating an incentive for new firms, also encouraged a number of existing firms to expand for the first time into transit-related operations.

With respect to compliance and enforcement efforts, UMTA, with regard to 105(f), has been successful in insuring compliance by requiring grantees to provide DBE goals before we approve the grant funding applications. The same situation would apply if UMTA finds serious programmatic deficiencies in a grantee's DBE program. To insure compliance, we do the following three things: First, make certain that appropriate grant contract language commits recipients to meeting the goals in advance of the contract; second, as I indicated earlier, by closely monitoring progress reports on a quarterly basis to determine how well a grantee is doing to meet those goals; and, third, and this year in particular, conducting, where and as necessary, onsite reviews of those grantees.

If a grantee of UMTA fails to meet its DBE goal, which could lead to noncompliance, they are required to submit an explanation for that nonattainment directly to UMTA. If we find that explanation to be unsatisfactory, and that circumstances were not beyond the grantee's control, we will take several actions. These include: First, not approving pending grant applications; second, requiring the recipient to take remedial action to meet the goal; and, third, as necessary, requiring the recipient to consider raising the subsequent year's goal, assuming that there are sufficient contracting opportunities available for DBE's. The recipient's failure to take remedial action may result in suspension or termination of UMTA funds.

I think that we have been successful to date in implementing the program.

I would be pleased to answer any questions that the subcommittee may have.

[Mr. Stanley's prepared statement follows:]

PREPARED STATEMENT OF RALPH STANLEY, ADMINISTRATOR, URBAN MASS TRANSPORTATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

Mr. Chairman and members of the Subcommittee:

I am pleased to be here this morning to report on the efforts and accomplishments of UMTA and its grantees in implementing the provisions of section 105(f) of the 1982 STAA.

As you may recall, when I appeared before this subcommittee last Septemher, I reported that in FY 1983 the disadvantaged business enterprise (DBE) participation level in UMTA-assisted contracts was 14.3 percent -- well over the 10 percent statutory requirement. We now have data from FY 1984 that indicate an even higher DBE participation level: of a total of just under $2 billion in total contracting opportunities, $293 million, or 14.94 percent, was awarded to DBEs by UMTA grantees in FY 1984. I want to emphasize that these and other amounts and percentages I will be discussing reflect actual contract awards, representing real business use.

In assessing these figures, I am pleased to report that high DBE participation by UMTA's grantees is found in every region of the country. Not one of UMTA's regions reported a DBE participation rate as low as 10 percent. It is also significant that in our direct procurement program, fully 27 percent of UMTA's procurement dollars were awarded to 8(a) contractors.

I am confident that DBE participation will remain at high levels in the current fiscal year. Of our more than 400 grantees, only two have requested UMTA's approval of FY 1985 DBE goals of less than 10 percent.

Actions Taken to Implement Section 105(f)

UMTA is undertaking a variety of steps to administer and implement section 105(f). A basic step is our review of grantees' DBE programs to assure that all applicable components are incorporated and addressed.

We also review grantees' overall DBE goals to assure that DBEs have maximum opportunity to participate in UMTA-assisted projects. If from these reviews we find serious deficiencies in the DBE program, UMTA would not approve any pending grant applications.

To assure that grantees, including transit vehicle manufacturers, are implementing all facets of their programs and attaining their goals in the current fiscal year, UMTA is emphasizing on-site reviews. To date in FY 1985, UMTA has conducted 17 such reviews of grantees and 2 of transit vehicle manufacturers. By the end of the fiscal year, we anticipate having reviewed at least 20 additional grantees and 4 additional transit vehicle manufacturers. During FY 1984, 12 DBE on-site reviews of grantees were conducted.

UMTA continuously provides technical assistance to assure implementation of section 105(f). Beginning this fiscal year, UMTA issued an internal order identifying the responsibilities and authority of UMTA Headquarters and Regional Offices and the procedures to follow in the administration of the program. UMTA also issued a Circular to all grantees that provides guidance and assistance on components that must be included in grantees programs. The Order and Circular supplement earlier guidance publications that include a publication, in "questions-and-answers" format, that explains specific provisions of the Departmental regulation and a publication, issued jointly with the Federal Highway Administration, that answers the most commonly asked questions and provides data on how DBEs can participate as contractors on mass transit projects.

Throughout the fiscal year, UMTA monitors grantees' efforts to use DBEs by reviewing their Quarterly Progress Reports. These reports have been computerized in UMTA Headquarters so that data regarding each recipient's most current utilization of DBEs are readily available. To date, information contained in the Quarterly Progress Reports has not covered ethnicity. We have requested our grantees to collect this information beginning with the third quarter of this fiscal year (April through June, 1985). The form by which grantees will report ethnic data was included in the Circular issued to all grantees. We would like to note that this new form is a Departmental initiative which UMTA is implementing.

Removing Barriers to DBE Participation

Barriers that tend to reduce minority participation in contracting opportunities are the same in transit as in other industries: namely, the tendency to rely on established business relationships; various technical and managerial deficiencies; and a lack of financing on the part of DBEs--including bonding market access. UMTA continues to use its section 20 Human Resources program to address these barriers. UMTA, like FHWA, held a series of regional DBE/grantee conferences in 1984, which had as one purpose the expansion of the grantee-contractor network to include DBEs.

I would like to note that a "networking" project has been implemented in one of the States that this subcommittee has recently heard testimony from. An award to the Florida State Conference of NAACPs has allowed that organization to identify DBEs for grantee procurements in six communities in that State. Aggregate FY 1984 DBE participation in these communities increased from 7.4 percent to 11.3 percent of total UMTA-assisted contracting opportunities. Incidentally, we have recently approved additional funds to continue this project and to add three additional Florida communities as implementation sites.

As part of its overall DBE support program, UMTA encourages transit operators to develop local projects of technical and managerial assistance for DBEs that are performing on industry contracts. UMTA provides financial support for these efforts through grants under section 20. Since enactment of section 105(f), UMTA has approved no fewer than 10 separate awards for projects of technical and managerial assistance to DBEs. These projects involve programs that are implemented locally, State-wide, and region-wide. UMTA also uses section 20 funds to help develop national programs in support of the purpose of section 105(f). The series of DBE/grantee conferences that I mentioned earlier was partially funded under section 20.

Certifications and Participation of New Firms

The DOT Minority Business Enterprise regulation requires each grantee to determine the eligibility of firms as DBEs. UMTA does not routinely collect information from its grantees about the number of certification actions. However, in response to this Subcommittee's request for these numbers, UMTA has surveyed a sample of grantees and developed national estimates based on the responses. UMTA estimates that its grantees certified about 6,500 DBE firms in FY 1983 and almost 9,000 in FY 1984. Of these firms, UMTA estimates that 1,900 (or one third) of the firms certified in FY 1983 and 6,500 (or two thirds) of the firms certified in FY 1984 were newly established firms. Grantee DBE officers surveyed also had the impression that section 105(f), in addition to creating an incentive for the formation of these new DBEs, also encouraged a number of existing firms in other fields to expand into transit-related operations.

UMTA's information on DBE participation does not distinguish among participating firms on the basis of the length of time they have been established. Consequently, we are unable to tell how many contracts have been received by newly established DBE firms, as opposed to DBE firms in general.

Compliance/Enforcement

UMTA does not collect data concerning denials of initial applications for certification or recertifications. We estimate that our recipients decertified some 400 firms in FY 1983 and about 700 in FY 1984.

One means we use to ensure compliance is to require a grantee to provide its DBE goals before approving its grant applications. The same situation would apply if UMTA finds serious programmatic deficiencies in a grantee's DBE program. UMTA uses the following procedures to ensure compliance: (1) making certain appropriate grant contract language commits recipients to meeting goals; (2) closely monitoring DBE quarterly progress reports to determine how well a grantee is meeting its goals; and (3) conducting, as necessary, on-site reviews of grantees.

If a grantee has failed to meet its DBE goal, which could lead to non-compliance, the grantee is required to submit an explanation for non-attainment to UMTA. If the explanation is unsatisfactory, in that it shows circumstances were not beyond its control and the DBE goal could have been attained, UMTA may take several actions. These include: not approving pending grant applications; requiring the recipient to take remedial action; and, as necessary, requiring the recipient to consider raising the subsequent year's goal, assuming sufficient contracting opportunities are available for DBEs. The recipient's failure to take remedial action may result in suspension or termination of UMTA funds.

My colleagues and I will be happy to answer your questions at this time.

Mr. **Mitchell**. I thank all of you gentlemen. I would be less than honest if I did not tell you that it appears to me, based on your testimony, that there has been a significant tightening up of procedures for the implementation of this program, as contrasted with last year.

I am not a cantankerous old man. When people do good things, I try to make that a part of the record. I was not at all impressed on our hearings last year. The intent was there, but in my opinion the administration was kind of sloppy. But it is evident that a significant tightening up has been done.

For example, the fact now that you are disseminating information on what is happening in some States, good things that are happening, that information is getting out to the other States. You weren't playing that role a couple of years ago, and that is the kind of role that I think you should play.

I certainly want to compliment you on your bonding program and on your short-term loan program. That is the way government should operate. When there is a problem, it should come up with innovative ideas to address those problems. So, generally, I think that there has been a tightening up.

I do have some questions. There are only three of us here, so I guess we will take maybe 10 minutes each on the first round and then come back for additional questions.

All three of you, have disadvantaged business enterprises benefited from this program, yes or no?

Mr. **Barnhart**. Certainly.

Mr. **Mitchell**. Is there absolute agreement that they have?

Mr. **Stanley**. I would say yes. And the benefits, certainly from UMTA's perspective, have been significant.

Mr. **Mitchell**. Mr. Marquez, you indicated—and it is a remarkably good statistic—that of the money expended in 1984, you are up to about 13 percent of contract funds going to DBE's. And that is above the floor of 10 percent. That is very good.

The question is, what is in that 13 percent? It is a good figure of accomplishment. However, if it includes commitments, then it is a misleading figure. Does the 13 percent represent actual cash dollars going to minority businesses?

Mr. **Marquez**. As far as I know, Congressman, the answer to that is yes, it is actual dollars that are going.

Mr. **Mitchell**. You would know.

Mr. **Marquez**. Pardon me?

Mr. **Mitchell**. You would know.

Mr. **Marquez**. I would know?

Mr. **Mitchell**. Yes; you said as far as you know.

Mr. **Marquez**. As I understand it, the $1½ billion is in fact actual dollars that are going to DBE's.

Mr. **Mitchell**. That is very good, because I was concerned about counting commitments. I have hammered on that theme at each one of these hearings: You don't count commitments. If somebody owes me $5,000 and doesn't pay me, I can't count that on my income tax. You just can't count commitments.

In your testimony, sir, you indicate the States, collectively speaking, have improved their certification process to the point of keeping front companies' participation to a minimum. This causes me some problem because Mr. Barnhart reported in his testimony before the Public Works Committee on May 23—and I am quoting:

> We have so many front organizations that have sprung up because majority contractors feel, in order to be successful and get a contract award, they have to have a firm 10 or 12 or whatever percent it is. Thus, they are getting into shell organizations, front organizations.

That is essentially your statement that you made.

Mr. **Barnhart**. Yes, sir, that is correct.

Mr. **Mitchell**. And yet you, sir, have indicated that we are now keeping the front company problem at a minimum. In addition to that, based on your testimony about the number of cases that are being not recertified or not certified, I assume that the front company problem is not of the magnitude that some would suggest that it is; or certainly that's your statement inferentially suggested. Is that correct? Is that a correct assumption?

Mr. **Marquez**. I think, Congressman, that we cannot say that we do not have a problem with front organizations.

Mr. **Mitchell**. I am not saying that at all.

Mr. **Marquez**. We know that they exist.

I think that we are making a tremendous effort toward discovering the front companies and moving forward. Hopefully, the States are doing the same thing.

Mr. **Mitchell**. Excuse me. How do you square that? Here's your statement: "Collectively the States are keeping front company participation to a minimum." And then Mr. Barnhart said in his testimony on the 23d: "We have so many front organizations."

Now, these are obviously conflicting statements.

Mr. **Marquez**. Well, I suppose it is how you want to characterize my statement as saying that they are to a minimum. The only way that I can clarify that for you is that we feel that we are getting a handle on front organizations. That is not to say that there is not a problem out there and that front organizations don't exist. Mr. Barnhart can speak for himself as to why he said what he did. And I can't disagree with him that there are front organizations out there.

Mr. **Mitchell**. We are playing on the edges of semantics now. No. 1, I agree that there are front companies out there.

No. 2, I disagree with the impression that is given in Mr. Barnhart's statement that they are all over the place benefiting from this program. You wouldn't permit it, the States wouldn't permit it, and you've said it's being held to a minimum. Of course there are front companies.

Bad eggs—not bad eggs but those who use practices that are not consistent with ethical and moral principles on occasion. There's a brokerage firm that everyone was listening to, E.F. Hutton, and it did something untoward. Now, does that mean that they are all crooks in the brokerage business? General Electric sort of had some questionable costs given to the Department of Defense. Does that mean that all DOD contractors are reprehensible? There's another one, General Dynamics. They did some kind of strange things.

Mr. **Barnhart**. Well——

Mr. **Mitchell**. If I may continue.

I, for one, am never going to indict the economic system of America because of the untoward behavior of some companies. And I think it is grossly unfair, grossly misleading, and borders on the scurrilous to suggest that this program is surrounded and involved in and utilizes front companies that are all over the place.

Yes, Mr. Barnhart?

Mr. BARNHART. I was going to point out, Mr. Chairman, I think it is quite obvious with the statistics that we presented that there are in fact abuses that have occurred and which you acknowledge. I would point out that we had 906 firms that were denied certification. There were 403 denied recertification. There were 359 who were decertified. That is over 1,600. So, obviously there is a significant number of firms, or there was, which were not legitimate.

I think what we are trying to say is, we recognize that there are abuses but, finally, I think we are getting a handle on it, as attested to by our operation in New Mexico, where we had nine firms, seven individuals indicted. That in itself says that there was a significant problem there. They took a big chunk of the DBE money in that State.

I don't know if that is typical. God knows, I hope it isn't. But certainly with a program that has grown as rapidly as this over $800 million in DBE contracts in 2 years in Federal highway, a tremendous growth. And I don't think that it was a willful dereliction on the part of the States that we had phony firms. I do think that we are beginning to get a handle on it.

Mr. MITCHELL. Thank you for your explanation. I resist what you are attempting to do.

There are front companies, and there have been, and there will be. There will be necessarily an ongoing effort to eliminate them from the program.

On the other hand, to make a statement that you made, that there are just so many of them and they're all over the place, actually discredits the program. It's a means of trying to destroy the program that you are supposed to be supporting.

Let's deal with denial of certification or failure to recertify a company. That doesn't necessarily mean that that was a front company because it was decertified. It could mean that the firm failed to comply with certain technicalities of the certification program. It could mean a number of things. So, if you take that gross figure of denial of certification or denial or recertification, you can't translate that into front companies. You know and I know that there are many other reasons why companies are decertified.

I guess the bottom line is I get very incensed by those who use a smear and discredit tactic without a real basis of fact or use that tactic to blow out of proportion the magnitude of the problem.

I don't like front companies. You don't like them. I know our colleagues don't like them. I assume that you would support my legislation, H.R. 1961, which will increase the penalties up to 5 years in prison or $50,000, or both. Would you like that kind of legislation? Would that be helpful to you?

Mr. MARQUEZ. I'm sorry. I didn't hear the first part of your statement.

Mr. MITCHELL. I'll say it again.

You abhor front companies. So do I and so do we on the committee. Therefore, in order to support your efforts to remedy a situation that is not of the magnitude that some would suggest, I have introduced a bill, H.R. 1961, which will increase the penalties from 2 years to 5 years in prison for front companies and from $5,000 fine to $50,000 fine.

Would that kind of bill help you in facilitating the implementation of this program?

Mr. **Marquez**. Well, I don't know that it goes to the implementation of the program. I suppose anyone can support legislation that will make it much more stringent or the punishment greater for front organizations. Obviously, if you're a prosecutor, you like to have that kind of authority.

If you are suggesting—and, pardon me, I have not read your bill—that the Department would be the one to move forward to prosecute on criminal prosecution, we can't support that. I think in general we support any kind of legislation that would strengthen criminal convictions for frauds.

Mr. **Mitchell**. I wasn't going to suggest that you would do the enforcement. We have a Justice Department, and we have the comparable entities at the State level. I just want a good tough one to ease your problems and allay your concerns about the extent and degree of this problem.

I think we will pass it. I think we will pass that.

I will take an informal poll. How does that sound to you?

Mr. **Gallo**. Not bad. Mr. Chairman, it is my belief that anytime you bring about stiffer penalties, especially when it has been acknowledged that front companies exist and try to abuse the system, I think that they do act as a greater deterrent.

No one likes to see programs that are designed to help individual companies get started and grow fall prey to individuals that abuse the system. So, I think anywhere you strengthen the laws to punish those individuals who would attempt to defraud Government programs would increase deterrent value.

Mr. **Mitchell**. Thank you.

Only my staff was capable of dissuading me from going to the figure that I wanted: 20 years in prison and a $100,000 fine, and both. That's how strongly I feel about it.

Congressman Hayes?

Mr. **Hayes**. Thank you very much, Mr. Chairman.

I just must say this to get it off my conscience. As you talk about front organizations, look at even the composition of the panel here. And I'm not being critical, I am just reflecting, as I should, on my own feeling. Being frank, you've got three white persons sitting here—one is counsel, two represent two different departments—and four black persons sitting here who apparently have no real role. So, I have to come to the conclusion to some extent this appears to be a front approach here.

I just have to say that in order to get that off my conscience, Mr. Chairman.

As you know, I come from Chicago, which is no citadel of democracy in terms of performance when it comes to small business. I represent the First District in Chicago which has only small minority businesses, and they have been struggling to get on the inside of some of the Department of Transportation's programs, you know, the expressways and things of that sort.

There have been front companies, in name only. This problem has been attacked. We raised questions about the 10-percent set-aside program. The State of Illinois denied it, but they did make some changes. But the problem still exists. I get complaints from small business people in my district all the time, about having been locked out, so to speak, and wanting me to help them to see what I can do to get them in on the construction program at O'Hare, for example, which is down now as a result, I understand, of the ironworkers strike there.

I think we have gotten over one major hurdle when we first started having field hearings on the Small Business Administration. It appears from your being here and your testimony that the survival of the SBA is already agreed to. But you mentioned some major problems that still exist; the funding and bonding arrangements, for example, if discontinued, as I understood was being proposed as a part of the approach, is going to play havoc with some of the minority businesses we have if they are discontinued.

My question then is, That there has been an understanding that you are going to change your approach in terms of elimination of the direct loans and guaranteed loans when it comes to SBA? Is there an understanding, that there is going to be more support for bonding, which is a source that has to be open to people to get into some of the highway construction programs? Or is there still pressure to eliminate and turn over to private entities the funding arrangements? Can you explain the policy?

Mr. **Stanley**. I will say that with regard to the Urban Mass Transportation Administration, we fully intend to implement, for the first time within UMTA, a bonding program which doesn't turn bonding over to a private company at all. Instead, it puts the private company in partnership with UMTA because we would share the initial capital funding of the bonding program.

As I indicated in my testimony, Congressman, we hope to have issued bonds from that program before the end of this calendar year. I can't speak for Federal Highway. Ray, you may want to.

Mr. **Barnhart**. I recognize, perceive that there is a need in bonding. And I have had many minority firms as well as majority firms tell me that. Having been a contractor, I understand that. I am concerned about having to set up an additional program to duplicate that which is already available in other parts of Government.

It is my understanding the Small Business Administration left $600 million worth of bonding capacity unused on the table last year.

My question is about Federal Highway setting up a bonding program. I don't know anything about a bonding program. I don't think my people know how to set up and counsel people on a bonding program. And it seems to me that we should be trying to utilize that mechanism that is already there and encourage that to be fully utilized instead of diverting our money into another area that is simply duplicative.

So, I have some serious questions about what we can do. Beyond that, it seems to me that we have a primary responsibility to ensure that barriers which deny people the right to participate are removed. I think we have been trying to do that. But I run into a very serious question as to whether or not we should take Federal highway funds, give them to a State, have a State then use that money to secure contracts, to give contracts to contractors, and then we bond those contractors and guarantee their work to receive our money. To me, there is some kind of a lack of check and balance there.

That is why I prefer to do what we can to strengthen our relationship and involvement with SBA in the Minority Bonding Program, or with Commerce, which also has one, rather than to simply set up another thing and set up another layer of bureaucracy and not truly address the problem.

Mr. HAYES. Even in some instances with certification the requirement is to be able to obtain bonding.

Mr. BARNHART. We've spent, since I have been in office, $30.5 million in supportive services organizations within the States. We are trying to get them to increase their emphasis and the PMC's on enabling firms to understand how to get ready for bonding, how to approach SBA, how to approach other organizations. It should be through counseling and training that we should be concentrating our activities because that is what we know how to do.

I don't know how I judge someone as to whether they are capable of being bonded. It puts me in a real dilemma because immediately when I say that, then people say, you just don't want to participate. That is not the issue at all.

Mr. HAYES. Mr. Marquez, based on your testimony and your experiences, isn't it a fact that the program has been good for minority contractors and for the Department of Transportation?

Mr. MARQUEZ. I believe so, Congressman. As a matter of fact, I think it obviously has increased the number of minority participation in our contracts. We like to talk about the program whenever we have the opportunity.

Mr. HAYES. The survival, so far as you are concerned, is not even questionable, is it?

Mr. MARQUEZ. The survival?

Mr. HAYES. Yes.

Mr. MARQUEZ. Of the program?

Mr. HAYES. That's right.

Mr. MARQUEZ. As far as I know, we are implementing the program as is.

Mr. HAYES. OK.

No further questions, Mr. Chairman, at this time.

Mr. MITCHELL. Thank you.

Mr. Gallo.

Mr. GALLO. Thank you very much, Mr. Chairman.

I would like to get back to the initial statement that was made dealing with the civil rights aspects. You stated through fiscal year 1983, 1984, the first quarter of 1985, the Office of Civil Rights within your jurisdiction received 392 appeals from firms that felt that they had been wrongly denied. You go on to say that of 209 of those appeals, only 15 were decided in favor of the appellant firms.

To me, that would certainly indicate that there has been a strong effort made by the department regarding the initial screening process. What is the procedure for that initial screening?

Mr. Hudson. Mr. Congressman, to allay any confusion, my office's role in the certification process really is only at the appellate level. The initial screening takes place——

Mr. Gallo. Excuse me. Now we see it's not a front organization——

Mr. Hudson. No.

Mr. Gallo. I'll straighten that out.

Mr. Hudson. Indeed, indeed.

Yes, sir; the initial screening takes place at the State highway department or the UMTA recipient level. Anyone who is denied by that agency has a right of appeal to the Office of Secretary of Transportation, which is my shop. We review the documentation and make a judgment that denial was either valid or invalid.

Mr. Gallo. Then you must be doing something right here to instruct those on the State levels.

Mr. Hudson. Yes, sir. We have issued guidance, and the highway and UMTA folks have issued very clear guidance to the recipients as to what constitutes a valid MBE, DBE, WBE. And I feel in the 2½ years that I have been involved with the program that there has been a substantial gain in screening out fronts, frauds, and illegal organizations.

Mr. Gallo. There was a question by the chairman as to whether or not it might be somewhat unusual to have the Department reviewing itself. And I think it was explained that there is a different department that reviews——

Mr. Hudson. And we are not reviewing any—my office is not reviewing activity by any other component of DOT. We are reviewing the activity of decisions made by a State highway department or an UMTA transit authority or transit property.

Mr. Gallo. Do you feel that those reviews and also the results that are given in the report are accurate?

Mr. Hudson. I feel the States are doing a very good job of screening out fraudulent activity, yes.

Mr. Gallo. Just touching on the bonding situation that Mr. Barnhart had previously discussed, I, too, would have some reservations getting into a new field where your direct responsibility is that of highway and not bonding, financial matters, but you made a statement dealing with the capacity. You say the report reveals that there is unused bonding capacity in existing Government bonding programs. You make that statement on page 3, I believe it's in your statement.

Mr. Barnhart. Yes, sir.

Mr. Gallo. Do you know the amount of bonding that is available? And can you give me some indication as to why you think the program is under utilized?

Mr. Barnhart. A report we had showed that in 1984 SBA was authorized to grant bonds totaling $1.2 billion, which incidentally is a little less than what we had in total contract awards to DBE's last year. The agency, as I understand it on a report we got, the SBA agency, actually guaranteed 9,800 bonds, for a total of $660 million. So, they left 55 percent of their total capacity unused.

It is my understanding again in 1985 SBA has authorization to guarantee bonds totaling $1.115 billion. So, it seems like they have capacity there, and I understand Commerce also has a bonding program. I do not know the status of that.

The fact that we did $1.269 billion in Federal Highway with DBE firms last year would indicate that something is going right, if they could get that amount of dollar contract amount with the problems of getting bonding.

Mr. Gallo. Is there anyone sitting before us that can explain why there has not been greater utilization, certainly leaving a substantial amount of bonding available? If there is a problem out there, why isn't it being used?

Mr. Mitchell. Would you allow someone sitting next to you to respond to that?

Mr. Gallo. Absolutely, Mr. Chairman.

Mr. Mitchell. That is really a problem with the Small Business Administration rather than with DOT. In past testimony and hearings with the Small Business Administration, to our chagrin and dismay, we found that there was a reluctance on the part of SBA to disseminate information out to its offices about the surety bond program. We made spot checks, and that information was just not put out to the field offices and the district offices and, in some cases, regional offices, even.

We have admonished SBA that they do not make the decision whether they like a program or not. The law is the law, and they are there to carry it out. They can not circumvent the law by not disseminating information about the availability of this program. That has been the problem. And it is going to be even more critical and acute because, as some of you know in this room, the surety bond industry is going to face a very, very serious problem this year. A number of them have been downgraded from A-bond to B-bond category. And there are a number of localities, States, and so forth, that will simply not accept a B-bond category. That means, more and more, we are going to have to look to the effective implementation of the surety bond program through SBA.

It is one of the few times that you and I are in temporary agreement. I praise you for setting up your bonding program, but there is no reason why SBA should not be made to carry out its responsibility. The money is there. The staff is there. There ought to be the coordination between DOT and SBA and P, Q, R and everybody else. And if SBA is not going to disseminate the information about a surety bond program, then you do it.

Mr. Barnhart. We are.

Mr. Mitchell. When the guys come into your office and you tell them no, we do not have it, but SBA is sitting over there with a big chunk of money.

I am really happy that we can be together for 3 or 4 minutes. I don't want to see a proliferation of programs when an agency fails to carry out its responsibility under the law.

Mr. Gallo. Mr. Chairman, that's where my questioning was leading. If in fact you have unused funds, it makes no sense to me to see different agencies creating or setting up their own bonding, which does take a great deal of expertise. It should be a centralized program if we are going to get into it at all.

In closing, I would like to commend the three of you for giving a very factual report, one that outlines the positive and also indicates some of the problem areas that exist. I, for one, appreciate it. Thank you.

Mr. MITCHELL. Thank you.

I have a couple of questions and then we will go to Congressman Addabbo.

Let me just add that on the bonding problem I think SBA ought to be made to carry out its responsibility. But I also applaud the efforts at the State level. Many States are setting up their own bonding programs. I think if they can do it expeditiously and efficiently, if they can move more quickly than SBA, then I have no problem with the States doing this.

Mentor-protege, that phrase is almost becoming an anathema to me. It is done voluntarily through the States. You don't have to have a mentor-protege program. The letters have started coming in from the disadvantaged businesses across the country to me. I will share them with you, their concerns about a mentor-protege program. I can't stop it. I don't want to stop it. But I will take sharp exception if a mentor-protege arrangement is used as meeting your DBE participation. That is not the same thing. A mentor-protege program I have often called an on-the-job training program for socially and economically disadvantaged businesses. That is not the same as that business actually participating in the program.

Now, if you want mentor-protege, if the States want it, that's fine. But what is your official position in counting that kind of arrangement toward meeting the law, the requirements of the law? What is the official position?

Mr. BARNHART. Federal Highway is the one that initiated that program.

We count that as DBE participation because that DBE must be a certifiable DBE firm and meet all of the requirements. Furthermore, the program is laid out in written form and supervised by the State precisely to avoid front organizations.

Mr. MITCHELL. I am not making myself clear.

I don't know your name, the gentleman on the front row, and I don't want to know it. But can you spend the next 3 days with me and I will show you the duties and responsibilities of a Congressman? In the event that you want to run for Congress, I am going to show you everything that I know: The rules, the procedures, what those silly little lights mean, and all of that. I am going to be a mentor, and you're going to be my protege. But you're not a Congressman. You're still a protege. You're not a bona fide Congressman.

Under the mentor-protege business arrangement, that protege company is in training to become an effective company, I suppose. And I think it's wrong to try to count that unless that protege company is actually receiving the dollars that every other minority business firm would receive.

Mr. BARNHART. It does.

Mr. MITCHELL. Unless it's actually in control of its operation——

Mr. BARNHART. It is, under our regulation.

Mr. MITCHELL. Well, I greatly fear that sometimes the States are not following your regulations.

Send a copy of your regulations to me.

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Mr. **Barnhart**. I will be happy to send you that in detail. And I think when you read that and see what we have specified, we will be in another area of agreement, not disagreement.

Mr. **Mitchell**. I am not sure about that, but I will read it.

[The material requested above follows:]

US Department
of Transportation
**Federal Highway
Administration**

Memorandum

Subject Mentor-Protege Guidelines

Date January 25, 1985

From Ray A. Barnhart R Barnhart
Federal Highway Administrator

Reply to Attn of HOA-1

To Regional Federal Highway Administrators
Regions 1-10

Attached for your information are the FHWA approved guidelines which the States may use to develop a mentor-protege program, if permitted by their State laws and regulations. Please distribute these guidelines to the division offices in your region so they may furnish a copy to their respective States.

The guidlelines are self explanatory; however, several items deserve special note. A mentor-protege program is not mandatory, but optional for the States and for contractors. The DBE/WBE firms involved in mentor-protege relationships must be independent business entities which meet the requirements for certification as defined in 49 CFR Part 23. While the FHWA recognizes the potential of the mentor-protege program in expanding DBE/WBE participation in the highway program, mentor-protege relationships must be monitored closely to assure the integrity of the DBE/WBE program.

If there are any questions, contact Mr. P. E. Cunningham, HHO-30, at 426-0392.

Mentor-Protege
A DBE/WBE Development Program

Many of the firms now recognized as leaders in the transportation industry started their business experience as subcontractors or suppliers of specialized services in response to specific needs. Lacking in sufficient capital or the technical and managerial experience necessary to assure long-term success of their ventures, special relationships often developed between engineers, contractors, suppliers, and others. Simply stated, established firms provided fledgling firms with specialized assistance when the arrangement was mutually beneficial: a mentor/protege relationship in response to a special need.

When the Congress enacted the Surface Transportation Assistance Act (STAA) of 1982 and mandated that a substantial share of the annual allocations from the Federal Highway Trust Fund shall be expended with disadvantaged businesses, it created a national special need: a need to insure the availability of sufficient numbers of qualified Disadvantaged Business Enterprises (DBE) capable of working in highway related activities to not only meet the congressionally mandated goals but to do so without compromising the competitive bid process.

The Federal Highway Administration (FHWA) believes that the mentor/protege partnership can be a legitimate relationship with potential to greatly expand disadvantaged or women owned businesses (DBE/WBE) participation in the Federal-aid Highway Program.

General Program Guidelines

The mentor/protege concept is an optional approach available to assist the State Highway Agencies (SHA) and contractors to meet the requirements of both the Surface Transportation Assistance Act (STAA) of 1982 and 49 CFR Part 23. It offers an opportunity to gain information and experience in a productive work situation to both (a) established DBE/WBEs working to expand their present capacity, and (b) less experienced DBE/WBEs needing training and assistance.

Should a State Highway Agency (SHA) choose to recognize mentor/protege relationships, formal statewide guidelines should be developed. The guidelines should be submitted to FHWA for review and approval. The following information is acceptable guidance in the development of a DBE/WBE mentor/protege program:

1. DBE/WBEs who meet the certification requirements of 49 CFR 23 are eligible for participation in a mentor/protege arrangement. An SHA may grant approval of a DBE/WBE application for certification concurrently with its approval of a mentor/protege arrangement.

2. In all cases, the DBE/WBE firm must be an independent organization. and the ownership by the disadvantaged individual(s) must be real. This does not preclude other employment and/or business interests by the disadvantaged or women owners of the DBE/WBE firms, provided such employment or business interests do not conflict with the power of the minority or women owners to direct or cause the direction of the management and policies of the DBE/WBE firm to make the day-to-day as well as major decisions on matters of management, policy, and operations (see 49 CFR 23.53 Eligibility Standards).

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3. The mentor/protege program is intended to provide DBE/WBE firms with advice and assistance and/or training. The program is not intended to provide DBEs and WBEs with a means to avoid management and operational responsibilities. Therefore, the mentor cannot be responsible for the management of the DBE/WBE firm. Under the program, administrative functions must be performed by personnel responsible to or employed by the DBE/WBE at facilities or locations under the control of the DBE/WBE. Such facilities or locations may be provided the DBE/WBE by the mentor; however, a separate written lease agreement covering such arrangements should be utilized. The mentor and the DBE/WBE must remain separate and independent business entities.

4. Part ownership in a DBE/WBE by a non-disadvantaged entity, including a mentor, is permitted by the regulations (49 CFR 23). However, any property, equipment, supplies, or other services which are sold, rented, or donated to the DBE as well as any investment by non-disadvantaged individuals must be reported to the SHA in the mentor/protege development plan and should further be covered by bills of sale, lease agreements, etc. Furthermore, any financial investment by the mentor must not create a situation wherein the mentor may assume control over the protege.

5. The mentor/protege relationship may include, when not in conflict with State law, an arrangement by mutual consent in which an independent third party, such as a bank or an accountant, is designated as an agent for the DBE. Such agents could receive progress payments for work accomplished by the DBE, made out jointly to the agent and the DBE, and make payments, on behalf of the DBE, to material suppliers or for Federal and State payroll taxes, etc.

6. There are several common types of assistance which a mentor might provide to a DBE/WBE contractor. These include:

   (a) Financial Arrangements:

   A common type of assistance provided by a mentor would be working capital. Time notes and stock issuance are generally accepted legal instruments by which a DBE/WBE may obtain working capital. Demand notes, referenced in earlier guidance, also fall into this category; however, their use is less desirable due to the inherent susceptibility for abuse through their recall feature. If stock issuance is the method chosen by the parties to arrange for the financing, the total amount of the DBE/WBE stock ownership must be at least 51 percent in order to retain its DBE/WBE certification. In no case can the day-to-day control of the firm be relinquished by the disadvantaged owner as a requirement of the loan.

(b) Technical and Management Assistance:

A successful mentor can provide valuable training in the technical aspects of operating a highway construction, material supply, engineering or other transportation related business to a DBE/WBE firm which may be relatively inexperienced. In addition, the mentor can also provide advice on project management and in particular make the DBE/WBE aware of techniques which may improve productivity and competitiveness. Other areas where training may be of benefit are in plan interpretation, estimating, and cost accounting methods. In each of these areas, however, the DBE/WBE contractor must retain the final decisionmaking responsibility.

(c) Equipment Rental and Use of Personnel:

A DBE/WBE contractor may need to lease equipment or augment its workforce with additional skilled personnel in order to perform certain work. It may work to the mutual benefit of the mentor and the DBE/WBE protege to arrange for the needed equipment through leasing agreements. Likewise, in limited instances, the mentor may provide personnel (with specialized expertise) to the DBE/WBE protege, provided the worker is under the direct supervision of the DBE/WBE firm for the performance of the particular contract work. Under such a relationship, the mentor should provide not more than a small portion of the personnel needed by the DBE/WBE. Long-term, continual, or repetitive use by a DBE/WBE subcontractor of personnel primarily employed by the mentor will be construed as an attempt to artificially inflate DBE/WBE participation. The extent to and conditions under which the DBE/WBE utilizes personnel or equipment of the mentor should be specifically outlined in the development plan (See Development Plan subpart 5).

(d) Bonding:

In the long term, it is desirable for the DBE/WBE to bond jobs on their own, in order to establish a relationship and track record with a surety company. The DBE/WBE will eventually need to obtain bonding on its own if it anticipates working in highway contracting as a prime contractor after a mentor/protege relationship is dissolved. This notwithstanding, there are at least two ways in which a prime contractor commonly assists subcontractors with bonding. In many instances, the prime contractor will bond the entire job and will in turn charge his subcontractors their prorata share of the bond cost. In other instances, the prime contractor may bond the entire job and "carry" its subcontractors, absorbing the cost of the bond itself. Either of these instances may be applicable to a prime contractor/mentor and DBE/WBE subcontractor relationship.

7. The examples discussed in paragraph 6 are not meant to be exclusive. Other methods of encouraging and supporting DBE/WBEs may be allowable under the regulations.

8. An area of special concern is exclusive arrangements. While State statutes may vary somewhat, Federal antitrust statutes are concerned with contracting arrangements which may limit competition. Any relationship in which a mentor requires a DBE/WBE contractor to have an exclusive bidding agreement may violate Federal antitrust laws with respect to limiting competition. During the course of the relationship, the DBE/WBE contractor must have the latitude to contract with others.

9. Unacceptable Practices Include:

   (a) Any subcontracting arrangement which artificially inflates DBE/WBE participation is not acceptable. Of particular concern are the interjection of DBE/WBE middlemen or passive conduits and arrangements in which a DBE/WBE prime or subcontractor is acting essentially as a broker.

   (b) The mentor firm shall not enter into any agreement on behalf of the DBE/WBE.

   (c) Backcharges for equipment, etc., exceeding customary prices.

   (d) Any agreement written or oral which gives the mentor undue control or leverage over the protege.

IT MUST BE NOTED THAT THE MENTOR/PROTEGE ASSISTANCE PROGRAM IS NOT INTENDED TO DIMINISH OR CIRCUMVENT EXISTING DBE/WBE RULES OR REGULATIONS, BUT RATHER IS INTENDED TO INCREASE LEGITIMATE DBE/WBE ACTIVITIES. ABUSE OF THIS PROGRAM MAY BE USED AS THE BASIS FOR ACTIONS AGAINST BOTH CATEGORIES OF FIRMS INCLUDING SUSPENSION OR DEBARRMENT.

Development Plan

All mentor/protege relationships should be evidenced by a written development plan, approved by the SHA. The following guidance should be considered in the development of such plans:

1. Copies of the development plan should be retained by all parties to it, and by the SHA.

2. The development plan should clearly set forth the objective of the parties and their respective roles.

3. The development plan should be for a specified length of time, e.g., 3 years, or for the duration of a specified contract or series of contracts (subcontracts).

4. The development plan should describe measurable benchmarks to be reached by the DBE/WBE at successive stages of the plan.

5. The development plan should provide that if resources of the mentor are utilized by the DBE/WBE firm in the performance of contracts or subcontracts for the mentor or for another contractor, the resources must be separately identified, accounted for, and compensated directly by the DBE/WBE to the mentor. If the plan provides for extensive use of the mentor's resources by the DBE/WBE firm, the arrangement should be closely scrutinized.

6. The development plan may also include training to be provided by the mentor to the DBE/WBE. Such training include:

   - Business planning
   - Recordkeeping
   - Technical
   - Capital formation
   - Loan packaging
   - Financial counseling
   - Bonding
   - Equipment utilization

7. The development plan should contain a provision that it may be terminated by mutual consent or by the SHA upon determination that:

   (a) The protege firm no longer meets the eligibility standards for certification as a DBE/WBE.

   (b) Either party has failed or is unable to meet its obligations under the development plan.

   (c) The DBE/WBE is not progressing or is not likely to progress in accordance with the development plan.

   (d) The DBE/WBE has reached a satisfactory level of self-suffiency to compete without resorting to special treatment provided in the development plan.

   (e) The plan or provisions thereof are contrary to the requirements of Federal, State or local law or regulation, or otherwise inimical to public policy.

8. The development plan may include a provision that the arrangement may be dissolved by either party for reason by notifying the SHA.

Mr. **Mitchell**. My point is that, if it's on-the-job training, and all of the benefits that would not normally flow to minority business is not there, then we shouldn't count it.

I will hold it until I read yours and then I will share with you some correspondence that we received from firms around the country about this problem.

Mr. **Barnhart**. I will be happy to.

Mr. **Mitchell**. All right. Since we are in the colloquy or dialog together, you have been the chief spokesman in terms of citing problems of the program, and it's necessary to do that. But you have been so vigorous since the inception of this program. I am sure as a good public servant by now you would have compiled a comprehensive analysis of all of these things that you have criticized. Have you done that?

Mr. **Barnhart**. Have I written a thesis on the program? No, I have not.

Mr. **Mitchell**. Not a thesis, a comprehensive analysis. It seems to me that as a good bureaucrat—and bureaucrat is a good word; that doesn't have any negative connotations—that if I were in your shoes and I saw all these things, I would begin to say, now let me get a little document together, a comprehensive analysis of all that I am talking about so that people won't say that I am just criticizing to be a carping critic, that I have these things fully delineated. Have you done that?

Mr. **Barnhart**. No, sir, I have not put it in writing. That is why we have a study going on now with a contractor, in order to identify the pluses and the minuses.

Mr. **Mitchell**. It is too bad it comes so late, because you began articulating your criticisms of the program in the first year. It is too bad that this contractor comes so late in the life of the program.

Will your contractor make some specific recommendations on these—quote—criticisms that you have raised?

Mr. **Barnhart**. Ed, what is the guideline on all of that, if you will?

Mr. **Quick**. The contractor, Mr. Chairman, is going to do a rather comprehensive analysis of the negative and positive impacts of the program as it affects the total contracting community and the Federal Highway Administration Program.

Mr. **Mitchell**. What was the impetus for the initiation of this study? Who recommended it?

Mr. **Barnhart**. I recommended it.

Mr. **Mitchell**. You did?

Mr. **Barnhart**. Yes, sir.

Mr. **Mitchell**. And you recommended it this year?

Mr. **Barnhart**. No. As a matter of fact, we have been working on that for something over a year, because we have had too many generalizations on both sides; and I felt that we ought to have some specific data on which we may base our evaluation.

Mr. **Mitchell**. You make my point. That is precisely my point: Why come so late? There have been all of these generalizations since the program first began. And I, for the life of me, can't understand why a good effective public servant would not have initiated this kind of activity once you started raising the criticisms.

Who is doing this study for you? What is the name of the outfit?

Mr. Barnhart. ABT Associates.

Mr. Mitchell. Oh, yes, I know them.

Congressman Addabbo, I am sorry I got carried away.

Mr. Addabbo. Thank you very much, Mr. Chairman.

Mr. Marquez, at the time of the last subcommittee hearing on this subject, some concern was expressed to me about the length of time it has taken to certify DBE's. For example, in New York at one time it was taking approximately 9 months to certify these companies. However, I understand that if the prime contractor submits a company for certification then the process can take less than 45 days.

Presently, what is the average amount of time it takes to certify a DBE? Does it take less time if the prime submits the company for certification?

Mr. Marquez. You are talking about the State certifying a DBE? I don't have that information personally. Mr. Quick may be able to give you some general observations. But since we don't deal with the State certification, I don't have that information.

Mr. Quick. The certification process can vary from, say, 30 days as a minimum to up to 9, 10, 12 months.

Mr. Addabbo. Well, if you have had national guidelines, why should there be such a variation? Do you monitor the States to see if they are sitting on these programs and not moving it ahead; 9, 10, 12 months seems quite an inordinate time for certification?

Mr. Quick. That usually results in instances where you have a tremendous backlog of applicants for certification. In some instances States have only assigned two or three people to the certification process.

Mr. Addabbo. Mr. Chairman, if they may, supply for the record the 1983 and 1984 and what you have in 1985, the various backlogs by State.

[Response to the above request follows:]

The FHWA does not collect data on States' backlog of certification applications, and consequently, the information requested is not available.

Mr. Addabbo. We spoke earlier about the civil rights appeals. According to your testimony, Mr. Marquez, through fiscal year 1983 and 1984, and the first quarter of 1985 the Office of Civil Rights received 392 appeals and decided 209. There are 153 cases that are still pending at this time.

How long has the oldest case been pending?

Mr. Marquez. Mr. Hudson, can you answer that question?

Mr. Hudson. I think the oldest case is probably about 1 year old, maybe a little older than that.

The problem with the delay in my office really is in two areas. First of all, there is a problem of administrative processing. I will put it differently. We have to request the data on which we make our determination from the States or from the recipients. And sometimes it can take an inordinately long period of time for those States to respond to us. For example, if ABC appeals to my office in January and we go back immediately to the State and ask what was the data on which you based your determination? Send all of your records and files to us. Sometimes after repeated nudging, it may take them months before they comply with our request. And we have no way of expediting their response to our inquiry. Therefore, we are unable to take action on the appeal.

The other part is simply a question of, I am training my staff now, and I hope by the end of the year I will have a far more competent appeals process than I have at the present time. Some of it is inexperience on the part of my own staff people.

Mr. **Addabbo**. So, we can wait for almost 1 year for certification in some cases? And if he or she is turned down, they have to wait another year for the certification appeal. By that time they are out of business.

Does it take approximately the same amount of time to process a decertification request?

Mr. **Hudson**. Either way—what we are doing is simply adjudicating an appeal, either from being noncertified or decertified.

Let me correct the terms. It doesn't take us 1 year in every case. The normal operating time is about—very often, we can do it in less than 1 month. The average time is approximately 100 days for appeal, which is entirely too long, I agree fully; 3 months is entirely too long to adjudicate an appeal. But that is mailing time, a lack of response on the part of the person from whom we get our data, and backlog in my own office. We take them in the order in which they are received.

It is a problem that we are aware of and that we are addressing. In fact, I have done a staff paper for internal coordination, making some recommendations as to how we can go about attacking this whole backlog problem on the appeals side.

Mr. **Addabbo**. I wish you would expand for the record the average time it takes for certification and the average time it takes for decertification.

[Response to above follows:]

In response to your question submitted prior to the June 5 hearing, the average processing time for MBE/DBE certification appeals is 100 days. We share your concern that this is an inordinate amount of time and have taken the following steps to shorten the processing time.

1. Through a selective reassignment of experienced personnel with legal training, we are hopeful that the professional level of the office has been significantly enhanced.

2. We have streamlined the adjudication process to reduce the number of layers of review each case goes through so that a technically sufficient adjudication reaches the Director of Civil Rights much quicker.

3. At the direction of the Assistant Secretary for Administration, a management study has been initiated to determine the optimal staffing levels and organizational arrangements to support this function. This study will be completed by September 1, 1985.

4. We have begun consideration of the use of electronic mail and telefax transmission systems to reduce the time it takes to receive the documents upon which the State agencies and recipients made their original decisions. If successful, this would greatly reduce processing time.

5. Our objective is to reduce the processing time for these appeals to 27 days by Spring of 1986, and to reduce the backlog to zero and be able to handle each case on an as received basis by Summer or early Fall 1986.

Mr. **Addabbo**. Pending the outcome of a decertification request is the firm in question still eligible to receive a DBE contract, or are they effectively suspended until a final decision has been made?

Mr. **Hudson**. Just by way of clarification, sir, my office very seldom gets involved in the certification process. What happens is a firm will apply to a State or recipient to be certified. That recipient, a State highway department or an UMTA transit property, will adjudicate that application and, for example, deny certification. They have a right of appeal to my office. What we are adjudicating is their failure to be certified or the fact that they have been decertified by a State agency, and they appeal that decertification action.

The nature of the action by the State agency does not affect our processing time. It takes the same amount of time either way, because we have to go back and ask what data did you use to base your decision on, and then review that and make a determination.

Mr. **Addabbo**. The administration's record on civil rights has not been the best. I have had my experiences with the Commission on Civil Rights. We see the inordinate delays there. I am just hoping that this is not a similar case.

Mr. Barnhart, I would ask you to submit for the record for fiscal year 1984 and fiscal year 1985 any statistics on DBE participation by FHA grantees in New York City under the Surface Transportation Act and, also, if you would, provide for the same fiscal years the percentage of awards made to businesses located in Queens.

In September, the State of New York testified that the U.S. Department of Transportation's definition of disadvantaged business enterprise differs substantially from the New York State DOT's definition of disadvantaged business enterprise. This disparity was cited as a problem in New York's implementation of a certification program.

Has the FHA and the State of New York attempted to resolve any substantive differences that may exist between the two definitions?

Mr. **Barnhart**. I didn't know of any great differentiation.

Mr. **Addabbo**. They testified before the subcommittee in September. So, I wish you would approach them and find out and supply the answer for the record.

Mr. **Barnhart**. Then we will do it.

Mr. **Quick**. Could I comment on that, sir?

Mr. **Addabbo**. Yes, surely.

Mr. **Quick**. To the best of my knowledge, all of the recipients subscribe to and follow the definitions for DBE and minority participation that the Federal Highway Administration and DOT have established.

Mr. **Addabbo**. Again, this was direct testimony by the State of New York. I would ask you to look into it and supply me with the testimony for the record.

[The information follows:]

The FHWA has taken the following actions to resolve the differences in definition between an MBE (as defined by New York State DOT) and DBE (as defined by the U.S. DOT):

FHWA's New York Division Office has had a number of meetings with New York State regarding the definition differences between MBE and DBE. The primary difference is that the State includes Portuguese as one of the ethnic minority groups presumed to be socially and economically disadvantaged under the MBE definition. The DBE definition used by US DOT is constrained by federal law and does not include Portuguese as one of the presumed groups. We understand that New York is in the process of developing new State MBE regulations. We have been working with the State to try to resolve any differences in the New York State definition and have commented on their draft regulations.

Mr. ADDABBO. Also, on page 9 of your statement you indicate that there have been complaints that non-DBE contractors are losing business and are being driven out of business because new DBE firms are benefiting from the law. For this reason you indicate that you awarded a contract to undertake a 9-month study of the impacts of the DBE Program on both minority and nonminority contractors, the highway construction industry and the Federal Highway Program. Who was the recipient of this award, and what was the contract value?

Mr. BARNHART. That was ABT Associates, Inc., of Cambridge. The amount was $186,000.

Mr. QUICK. That is correct.

Mr. ADDABBO. How long was that?

Mr. BARNHART. It is a 9-month study.

Mr. MITCHELL. Will you yield for just a moment, Congressman Addabbo?

Mr. ADDABBO. I yield to my chairman.

Mr. MITCHELL. Thunderstruck. This study was initiated because some outside force said that they were being driven out of business. Is that correct?

Mr. BARNHART. No, that is not correct.

Mr. MITCHELL. Now, wait a minute. Let me get it straight now. You may have to take your time with me.

Would you repeat your statement, Congressman Addabbo?

Mr. ADDABBO. Well, I take Mr. Barnhart's statements and quote directly therefrom.

Mr. BARNHART. Oh, it does say that.

Mr. ADDABBO. It says:

> Since we passed section 105, we have heard the complaint established non-DBE specialty contractors are losing business, even being driven out of business by new DBE firms benefiting from the law. This concern was one of the main reasons we awarded a contract to undertake a 9-month study of the impacts of DBE.

Mr. MITCHELL. Will you continue to yield to me?

Mr. ADDABBO. Yes.

Mr. MITCHELL. Are they saying that these non-DBE specialty contractors motivated you to initiate the study?

Mr. BARNHART. No, sir——

Mr. MITCHELL. Hear me out please.

This year if DBE's received $1½ billion out of $11.4 billion, then this is the reason they are being driven out of business?

Enlighten me on how this ABT study got started. You said it was your own little idea, totally your own motivation to make this thing work properly. Now you have another statement saying it was because of complaints. Which is it?

Mr. BARNHART. Mr. Chairman, I see that that is what the words say, and I apologize for it, because I didn't catch that when I went over this testimony. In fact, I am the one who initiated the study. Since that time, and during this whole interval of the last 2½ years, we have had allegations all across the board regarding the DBE program. It was I who said we want an impact study to look at the pluses and the minuses, not specifically, as this implies, because of specialty firms. In fact, specialty firms are being driven out of business. Many existing legitimate small business firms which have been in existence for years in the specialty area cannot now get contracts competitively as a result of this provision, because the prime contractors are trying to achieve the goal that has been specified in their contracts. As a result, they direct their subcontract awards to specialty firms that are low-capital intensive, low-skill intensive, which falls into that specialty area. Thus, we have any number of specialty firms in the safety area, in the hardware area, in the guard rail area, in the landscaping area, who in fact are going out of business.

Mr. Mitchell. Will you yield to me just one more time?

Prove it. You give me a list of names of those companies, their addresses, and I am going to get on the phone and call them. I want to know who they are that are being driven out of business. That's arrant nonsense, arrant nonsense.

Mr. Barnhart. I will be happy to supply you with the figures.

Mr. Mitchell. Supply it.

Mr. Barnhart. As a matter of fact, Mr. Chairman, just Friday I got a call from a gentleman who manufactures guardrail and also has a construction company to install the guardrail. That individual says he has got to get out of business on the construction side because he can no longer get a contract because of gravitating of those contracts to minority firms. Now, like it or not, that is my observation. I will be happy to supply you with some details.

Mr. Mitchell. Yes, and I'm going to G-2 it to death, because I think that's, again, a part of a smear and discredit tactic that has been used by some people in this program, the perpetuation of the myth that, if you spend $11 billion and minorities get it all, DBE's get 1.4 percent of that, or some paltry sum, that the rest of them are driven out of business.

It's Congressman Addabbo's time, and I am not going to pursue it. Give me the list.

Mr. Barnhart. I will be happy to.

What we have found is that, because of the high capital requirements in many areas of paving, et cetera, developing firms don't have those resources to get into that type of work. Thus, you find that so much of the work is concentrated in other specialty areas. Now on the form we are getting, we will be able to track that, because we are getting from the States the type of contract that is actually being awarded. So, it will not be left up to guesswork. It will be well documented. I will get you what we have.

[The information follows:]

The following is a list of nonminority individuals/firms which have reported adverse (economic) impacts related to implementation of section 105(f) of the STAA of 1982.

Fontana Steel P.O. Box 577 17190 Valley Boulevard Fontana, California 92335	Donald G. Ware Executive Vice President
Bates and Rogers Construction Company 600 West Jackson Boulevard Chicago, Illinois 60606	John W. Rogers Chairman, C.E.O.
John G. Palmer, Sr. c/o Foundation Corporation 616 S. Ricketts Avenue Bartonville, Illinois 61607	
Adarand Constructors, Incorporated P.O. Box 7670 3650 Lloyd Loop Colorado Springs, Colorado 80933-7670	Randy M. Pech President
National Barricade Company 1140 S. Kalamath Denver, Colorado 80223	Dean Story President
Warning Lites of Illinois, Incorporated 844 Kay Avenue Addison, Illinois 60101	John C. VandeVelde Vice President
Johnson Brothers Construction P.O. Box 1002 Litchfield, Minnesota 55355	R. W. Johnson President
Southern Seeding Service, Incorporated P.O. Box 22092 4535 West Market Street Greensboro, North Carolina 27420	Ralph D. Stout, Jr.
Coral Construction Company P.O. Box 347 Wilsonville, Oregon 97070	Deane Clapperton Vice President
Rhode Island Nurserymen's Association 339 Woodward Hall Kingston, Rhode Island 02881	Mary Hallene President
Jackson Construction, Incorporated P.O. Box 5648 1106 Methodist Park Road West Columbia, South Carolina 29171	K. W. Simons Vice President

Southern Construction Company P.O. Box 667 Petersburg, Virginia 23804	Gerald K. Moody President
Joseph S. Tenke Vice President 2129 Yvonne Street Waukesha, Wisconsin 53186	Century Fence Company
Decker Supply Company, Incorporated 3220 Commercial Avenue Madison, Wisconsin 53714	Stephen W. Decker Vice President
Jones Brothers Dirt and Paving Contractors, Incorporated P.O. Box 3983 Odessa, Texas 79760	J. W. Jones President
J. L. Kent and Sons, Incorporated P.O. Box 69 Spotsylvania, Virginia 22553	Robert L. Kent Secretary
Stephen C. DeWeese 4838 Hansen Court Columbus, Ohio 43220	
Ben Tom Corporation 6600 Huntly Road P.O. Box 497 Worthington, Ohio 43085	C. M. Gegenheimer Chairman of the Board
T. Brown Constructors, Incorporated P.O. Box 26508 Albuquerque, New Mexico 87125	Ted F. Brown President
Joseph J. Hock, Incorporated 5500 Belle Grove Road Baltimore, Maryland 21225	Joseph A. Burton Chairman of the Board
Davis Concrete Construction Company 11633 S. Mayfield Avenue Worth, Illinois 60482	Charles F. Davis President
J. H. Dowling, Incorporated 705 W. Madison Street P.O. Box 308 Tallahassee, Florida 32302	J. H. Dowling, Jr.
Hamilton Brothers Electric, Inc. 655 South Main Springville, Utah 84663	Gordon D. Hamilton President

R.A.M. Construction Company R.D. 1, Box 479 1/2 Frederica, Delaware 19946	Yvonne E. Milton President
Madden Contracting Co., Inc. P.O. Box 826, Sibley Road Minden, Louisiana 71055	James D. Madden President
Winchester Construction and Engineering Co., Inc. P.O. Box 2005 Tallahassee, Florida 32316	Jon Winchester, P.E. President
Dallas L. Wolford 614 Charleston National Plaza Charleston, West Virginia 25301	
C. H. Barco Contracting Company 7587 Wilson Boulevard Jacksonville, Florida 32210	Charles H. Barco
Virginia Road and Transportation Builders Association 30 La Brook Drive Richmond, Virginia 23225	William H. Craig, Jr. Executive Vice President
Beck Electric Construction, Inc. P.O. Box 450 Sunbury, Pennsylvania 17801	Jay H. Russell Secretary/Treasurer
Lewis Construction Company Box 2552 1025 11th Avenue North Great Falls, Montana 59401	G. A. Lewis President
J. H. Dowling, Inc. P.O. Box 308 705 West Madison Street Tallahassee, Florida 32302	J. H. Dowling, Jr.
Larson-Pugh, Inc. P.O. Box 5156 Austin, Texas 78763	Robert L. Pugh President
Sharon N. Mutschler 212 E. Ninth Street Watsontown, Pennsylvania 17777	
Kentucky Guard Rail Co., Inc. P.O. Box 416, Steel Drive Elizabethtown, Kentucky 42701	Robert B. Walker Executive Vice President

Carl M. Weber Steel Services, Inc. P.O. Box 288 Kutztown, Pennsylvania 19530	Bruce C. Weber Vice President
Buskerud Construction, Inc. P.O. Box 126 Dell Rapids, South Dakota 57022	Harold Skatrold President
MICA Corporation P.O. Box 14350 Fort Worth, Texas 76117	L. C. Tubb
Taylor Construction Company, Inc. 9014 Parkhill Circle Lenexa, Kansas 66215	Everett J. Taylor President

Mr. ADDABBO. We have found a similar problem quite often, especially in the Defense Department, where they purposely build opposition to a program by knocking out other small business firms. The problem is that, when we institute a program like this, we don't expect the work to be taken from Peter to give to Paul. What we are expecting them to do is look for other places to set contracts. As the chairman pointed out, out of $11 billion there is enough room to find contracts which would not adversely affect or could be taken away from someone that presently has a contract, especially if he be a small business. It is always a question of doing it the easy way: Since this is a small business contract, we'll take it away from a small business, and place it under the DBE Program.

Small contracts, yes, I can understand that, I have seen it, because the effort is not being placed where it should be, and that is to look for further breakouts out of the funds that are awarded to big business and looking for new small business capability, not old business just being moved over to a DBE to comply and come up with the numbers. Numbers mean nothing.

Mr. BARNHART. What we have been trying to do is get the States to reduce the size of many of these contracts, to break them down into smaller and more manageable units in order to provide more contract opportunity. And we have been quite successful in doing that.

Mr. ADDABBO. I know I am imposing upon you, Mr. Chairman.

Mr. MITCHELL. No, it is Mr. Hayes who has been patiently waiting.

Mr. ADDABBO. For the record, Mr. Stanley, on the Urban Mass Transportation, I would ask you, as Mr. Barnhart, supply for the record the 1984 and 1985 statistics on DBE participation by UMTA grantees in New York City under the Surface Transportation Act and also indicate the percentage of DBE awards made to minority businesses in my county, Queens, NY.

You mentioned that some grantees requested approval of 1985 DBE goals of less than 10 percent. Where were those grantees located?

Mr. STANLEY. Reno, NV, and Rochester, MN, were the only two.

Mr. ADDABBO. What were their reasons for submitting 1985 DBE goals for less than the 10 percent?

Mr. STANLEY. I could ask Bob Owens to address that. I would say in general, with regard to last year, again, we had very few requests, but part of the request on the individual transit properties go to what their particular procurement activities for that year are. As you know, a good deal of our assistance, particularly the smaller properties, is operating assistance, which goes to subsidize labor costs for the staff of the transit agency. Therefore, dollars don't always equate to contracting opportunities.

Bob, if you could address those two specific cases.

Mr. OWENS. Yes; San Diego had also requested a goal of less than 10 percent. Their request was for a little over 5 percent. When San Diego took a look at the dollars that were available for contracting, it found that, due to a department procedure called the 20-percent rule, that it did not have an opportunity to count 100 percent of the dollars toward the contracts. Only 20 percent of those dollars would count toward its goal. In fact, during fiscal year 1984, its actual achievement was over 13 percent of the dollars to DBE's. So, in fact, we had given approval for a goal of 5 percent but they achieved a level of 13 percent.

Rochester, MN, had a situation where it, again, did not have opportunities to contract out and, as a result, it requested a goal of less than 10 percent. In taking a look at its contracting opportunities for 1984 and 1985, we agreed to approve their goal of less than 10 percent because they had most of their opportunities again in an area where they could only count 20 percent of the total contracting dollars toward that goal. But, over all, the grantees have done a very good job in trying to set a goal of 10 percent or higher. We have a number of grantees that have set goals of 25 percent or higher.

Mr. ADDABBO. Thank you.

Mr. STANLEY. If I could just comment, the 20-percent rule that was adopted internally was an effort to deter grantees from just contracting out for services where that service provider may just be a distributor reflecting a product that was provided by a majority firm. We found, particularly in the smaller properties, in a number of instances, that operated to the detriment of a disadvantaged business firm that may be a fuel supplier, which is one of the primary contracts let by a transit authority. And to allow only 20 percent of that fuel supply, which is a normal course of business in distribution of fuel, to be counted toward the goal, actually acted in some cases as a detriment to the disadvantaged business firm. So, we have waived that 20-percent rule.

Mr. ADDABBO. Thank you.

Thank you very much, Mr. Chairman.

Mr. MITCHELL. Congressman Hayes, thank you for being patient. Blame part of it on me, usurping portions of Congressman Addabbo's time. We are on the second round.

Mr. HAYES. My questions, I guess, are sort of piggyback on the questions that my colleague Mr. Addabbo raised and may be another offshoot from it at least. It has to do with the old question of 105(f) or the 10-percent set-aside. I want to ask of you, Mr. Barnhart, did you in the first year have a lot of problems implementing section 105(f)?

Mr. BARNHART. We had a great deal of resistance on the program. But, quite frankly, it grew so rapidly and the certification procedure was a little loose, the goal was made. The problems of administration truly started after that as we began to identify some of the abuses and the lack of tightness on certification.

But, you know, there are some problems in there because we require the Governors of States to sign off on any request for goals of less than 10 percent. We have today I think five States that have requested goals of less than 10 this year. The State highway departments then in order to meet that goal have pushed extremely hard and have generally made it. But the rub comes because, if they tighten up on the certification procedure, which we are insisting they do, then it means the reaching of that goal is that much more difficult. So, we do find a foot-dragging in many States on getting after the certification. So, we have had some problems in that regard. But I do think the States are coming along quite well now.

Mr. **Hayes**. Would you recommend reauthorization of this program?

Mr. **Barnhart**. That decision will be made by the Department of Transportation, the administration. I would prefer to have general counsel address that.

Mr. **Hayes**. All right.

Mr. **Marquez**. That issue as well as all the other issues in the highway and transit program are being reviewed by the Secretary. At the time that she gets ready to submit the bill, she will address that issue.

Mr. **Hayes**. In your opinion as counsel for the Department, if the program is not reauthorized, do you think the contracting opportunities for disadvantaged business enterprise will increase, decrease, or remain at current levels?

Mr. **Marquez**. Well, that calls for speculation on my part.

Mr. **Hayes**. I would like to have you speculate——

Mr. **Marquez**. I'm sorry?

Mr. **Hayes**. Go ahead. I say, I would have you speculate a little.

Mr. **Marquez**. I would speculate as to whether it would increase or decrease. I have no way of knowing.

Mr. **Hayes**. Do you have a recommendation? The Secretary must depend a lot on your recommendation.

Mr. **Marquez**. I don't have a recommendation for the Secretary at this time. Whenever she gets ready to ask me, I certainly will be prepared.

Mr. **Addabbo**. If the gentleman will yield, what will be your recommendation if she were to ask you today?

Mr. **Marquez**. I am not prepared at this point to make any recommendation to the Secretary. We have not started to discuss the variety and the great number of issues that are involved in the highway program. So, I am not ready to make any recommendation.

Mr. **Addabbo**. If the gentleman will further yield, the program has been in existence for 3 years now. You either have a recommendation that the program be terminated or continued. You have enough facts. You have 300-some-odd appeals. You have gone through millions of dollars of contracting out. And you still don't have a recommendation whether the program should be killed or not?

Mr. **Marquez**. I think there are a lot of things to study. For example, Mr. Barnhart has a study going. We are looking at this program as well as many other programs. I am not prepared at this time to tell you that I have a recommendation.

Mr. **Addabbo**. So, you're really not fully supportive of the program?

Mr. **Marquez**. I am supporting——

Mr. **Addabbo**. You are supporting it because the legislation says you are supposed to support it, but there is not real wholehearted support to the extent that you say it's a good program and I am ready to stand behind it and recommend it. You're doing it because the law says you have to do it, without a degree of enthusiasm.

Mr. **Marquez**. Well, sir, that's your opinion.

Mr. ADDABBO. Well, if you had enthusiasm, you would say, we're going to certify that it's a good program, it's working and it's doing some good for the economy, and therefore it should be authorized.

If you don't have enthusiasm at this point in time with the program going, then you are merely going along as the rest of the administration is because they are required to.

Mr. HAYES. May I reclaim what time I have left, Mr. Chairman?

Mr. MITCHELL. We have abused you terribly. Take your time.

Mr. HAYES. I want to ask Mr. Barnhart, do you know what level of disadvantaged business participation was in the Federal highway programs in Alabama or Mississippi prior to this program?

Mr. BARNHART. We can get that information.

I will mention, Mr. Hayes, in the year before this administration came into office, nationwide there were $232 million that went to minority contractors. In my first year, we increased that to $358 million, followed by $415 million the next year. So, the program was growing without the mandate, the law, but simply because of desire to open this system up.

We will be happy to supply that data for you.

Mr. HAYES. I would like to have it.

Mr. BARNHART. In 1981 and 1982, apparently they accomplished 0.7 percent of minority participation in Alabama. In 1983 it was 11.4. And in 1984 it was 12.4.

Mississippi was 2.5 in 1981; 2.6 in 1982; 10.6 in 1983.

Mr. HAYES. My final question is, you indicated at the May 23d hearing that many of the majority contracts are finding that States are in fact requiring not a goal but a quota of that percentage. Now, what States have been using quotas?

Mr. BARNHART. I would be happy to provide for the record States that have rejected bids because the contractor did not make the goal that was specified. I do not have that available here, but we can get that data for you.

Mr. HAYES. I think, Mr. Chairman, this is my final question, if we could get that information.

Mr. MITCHELL. I think we need it.

Mr. HAYES. It would be very helpful.

Mr. BARNHART. We will do that.

[The information follows:]

The following States have rejected bids because of a failure to meet DBE goals:

Massachusetts
New Hampshire
New York
Pennsylvania
Virginia
Florida
Kentucky
Mississippi
North Carolina
South Carolina
Tennessee
Illinois
Indiana
Minnesota
Oklahoma
Texas
Iowa
Kansas
Missouri
Nebraska
Montana
North Dakota
South Dakota
Utah
Wyoming
Arizona
California
Nevada
Oregon

Mr. **Hayes**. I have no further questions.

Mr. **Mitchell**. Gentlemen, you have been here a long time. Again, I want to compliment all of you on the tightening up of the operation of this program. I have never had many problems with UMTA, but across the board apparently there has been a tightening up; and that is exactly what the Congress expects you to do.

There was one question I forgot to ask, on that little mysteriously initiated impact study. Who was the lowest bidder on that? Was the firm that got the contract the lowest bidder?

Mr. **Barnhart**. I would have to get you a list of those bidders. I presume that they were. I do not sit on that panel.

Mr. **Mitchell**. Does anyone in the room sit in or near or on that panel?

Mr. **Barnhart**. I will be happy to supply that information for you.

Mr. **Mitchell**. And it was put out on a competitive bid?

Mr. **Barnhart**. It was a competitive negotiation, was it not? I think we had 10 respondees, and I believe they negotiated with 10 different firms.

Mr. **Mitchell**. OK.

I shouldn't do this. Were any of the respondees in association with some of these outfits that did their own individual studies like AGC and the rest of them who opposed certain aspects of this program? Was there any kind of relationship between them?

Mr. **Barnhart**. I haven't any idea. Let me give you a list of those firms that were in the final group.

Mr. **Mitchell**. Well, no, don't bother.

Mr. **Barnhart**. I would be happy to do that.

Mr. **Mitchell**. No, I won't need it, because I would have to spend a lot of time trying to track whether there was any even nebulous association with this outfit, association of State highway and transportation officials——

Mr. **Barnhart**. No, sir, there was none—I don't believe there——

Mr. **Mitchell**. Don't bother to give it to me then.

Mr. **Barnhart**. OK.

Mr. **Mitchell**. Thank you for tightening up on the operation.

In closing, I must say that I am far junior to Congressman Addabbo in this Congress and far junior to many other Members. But, gentlemen, I have been here long enough to see programs destroyed by one or more individuals who, out of their own inflexible, rigid mindset, and in some cases biases, in some cases prejudices, I have seen them destroy programs. The way you do that is to constantly carp and criticize, to make generalized statements without any comprehensive analysis or data, even though that might be done at a later date.

It is kind of tragic for me, as a Member of Congress, to see that happen. Those persons have access to the media. They have access to speaking engagements. And whatever their own motivation is, whether it's racism or prejudice or an economic-philosophical position, I have been around here long enough to see them destroy programs.

I hope that that does not happen in this case. I tell you, if you don't have this section included in the law, you are going right back to a situation in Mississippi where it was 2.1 as opposed to 11-point-something. People are going to respond to the law.

I am greatly distressed by those in the Federal Government who, out of their own perverted reasons, seek to accomplish their end through this tactic of smear and discredit. Don't let it happen with this program. It has proved its worth. There have been problems, but for the first time DBE's are beginning to participate meaningfully in this economic system just like everybody else does.

I want to see the time come when we don't need the law. But if you are rational, and thinking, and unbiased, you know we need the law right now. We are a long way from the millenium.

Thank you very much for being here.

Mr. Barnhart. Thank you very much, Mr. Chairman.

Mr. Mitchell. The hearing is adjourned.

[Whereupon, at 10:55 a.m., the subcommittee adjourned, to reconvene subject to call of the Chair.]

APPENDIX

APPENDIX A.—ETHNIC BREAKDOWN OF CONTRACT AWARDS TO DBE'S, FISCAL YEAR 1984

REGION	DIVISION	BLACK		HISPANIC		ASIAN		INDIAN	
1	HEADQUARTERS								
	CONNECTICUT	82	14,563,259	17	5,990,357	6	764,967	0	0
	MAINE	53	867,577	6	644,985	1	385,777	41	1,972,803
	MASSACHUSETTS	57	4,715,174	12	1,579,505	4	[illegible]	11	1,472,186
	NEW HAMPSHIRE	60	2,003,397	3	479,579	0	0	19	3,202,367
	NEW JERSEY	39	3,751,826	33	3,234,367	21	3,423,354	13	1,897,734
	NEW YORK	121	25,789,473	104	24,438,023	37	4,140,060	53	5,407,285
	RHODE ISLAND	27	2,982,936	2	[illegible]	1	18,900	3	355,700
	VERMONT	5	276,062	2	140,543	5	738,277	16	1,015,360
	PUERTO RICO	0	0	41	40,768,834	0	0	0	0
	TOTAL								
3	HEADQUARTERS								
	DELAWARE	57	3,437,400	5	124,176	0	0	7	195,535
	MARYLAND	193	23,321,744	11	633,607	62	8,599,036	2	26,160
	PENNSYLVANIA	207	26,057,688	78	4,200,832	31	2,084,440	4	107,352
	VIRGINIA	148	19,895,793	3	8,876,625	5	157,413	9	4,326,437
	WEST VIRGINIA	87	13,332,025	14	1,503,957	13	1,815,993	1	292,000
	DIST. OF COL.	34	5,954,841	10	5,874,232	0	0	0	0
	TOTAL								
4	HEADQUARTERS								
	ALABAMA	149	14,637,299	3	704,224	0	0	85	6,740,699
	FLORIDA	133	5,969,769	50	3,635,034	1	138,557	50	3,515,489
	GEORGIA	189	15,039,697	25	15,032,885	1	23,677	13	776,837
	KENTUCKY	140	19,197,480	11	1,535,006	10	3,965,450	12	3,111,974
	MISSISSIPPI	156	14,887,843	5	250,365	5	306,924	52	3,908,452
	NORTH CAROLINA	100	18,983,756	2	556,174	8	780,111	77	6,337,971
	SOUTH CAROLINA	163	13,322,309	10	1,890,135	1	340,532	29	2,759,277
	TENNESSEE	123	19,424,433	18	530,859	12	2,461,129	38	3,649,507
	TOTAL								
5	HEADQUARTERS								
	ILLINOIS	618	40,854,905	218	[illegible]	55	5,412,233	16	14,744,577
	INDIANA	279	12,181,712	109	27,997,006	112	1,579,005	41	6,095,789
	MICHIGAN	178	18,604,472	164	12,592,568	12	761,226	63	4,006,349
	MINNESOTA	39	7,637,464	18	1,765,813	18	1,182,104	99	19,612,810
	OHIO	505	64,826,118	46	10,732,689	21	794,506	62	12,007,334
	WISCONSIN	117	4,663,005	145	4,920,541	26	596,018	198	7,405,236
	TOTAL								
6	HEADQUARTERS								
	ARKANSAS	66	4,771,747	17	1,259,205	0	0	88	9,406,870
	LOUISIANA	72	6,098,248	12	4,357,998	11	78,543	9	5,016,425
	NEW MEXICO	0	0	112	15,354,130	13	4,389,699	9	738,322
	OKLAHOMA	17	6,218,589	0	0	0	0	89	9,086,242
	TEXAS	80	9,602,776	340	48,445,032	7	364,787	62	6,003,627
	TOTAL								
7	HEADQUARTERS								
	IOWA	306	13,636,697	65	2,206,492	36	721,808	45	861,533
	KANSAS	145	7,058,538	48	1,353,689	0	0	62	4,971,768
	MISSOURI	275	27,074,063	14	584,313	0	0	122	6,690,424
	NEBRASKA	74	10,220,620	51	3,945,116	0	0	27	373,454
	TOTAL								
8	HEADQUARTERS								
	COLORADO	36	3,846,146	97	12,079,865	10	2,319,422	0	0
	MONTANA	0	0	7	1,363,090	2	850,810	109	10,590,460
	NORTH DAKOTA	1	346,112	1	10,500	1	25,176	72	5,023,730
	SOUTH DAKOTA	31	1,620,395	8	203,425	10	372,236	121	7,534,941
	UTAH	4	93,997	62	9,121,686	25	2,592,968	36	6,794,812
	WYOMING	4	51,364	22	1,698,324	0	0	22	2,971,203
	TOTAL								
9	HEADQUARTERS								
	ARIZONA	3	7,360,788	87	11,923,870	6	875,094	20	10,013,958
	CALIFORNIA	274	16,595,374	564	54,652,314	132	6,213,794	84	4,149,002
	HAWAII	0	0	0	0	52	7,948,594	14	3,950,423
	NEVADA	6	623,605	25	3,376,985	1	121,476	19	15,175,513
	TOTAL								
10	HEADQUARTERS								
	ALASKA	8	4,938,731	18	728,663	6	588,786	31	5,194,811
	IDAHO	7	940,682	20	970,504	4	350,701	52	6,507,940
	OREGON	26	1,713,383	76	4,576,165	39	2,473,620	37	3,178,615
	WASHINGTON	55	10,788,475	81	3,123,179	87	2,820,931	59	3,930,812
	TOTAL								
	GRAND TOTAL	5569	551,250,320	2864	377,210,651	920	76,405,229	2343	237,584,182

[illegible]

APPENDIX B.—FISCAL YEAR 1984 REPORT OF FEDERAL-AID DBE AWARDS AND COMMITMENTS

JUN 4 1985

STATE	FY 1984 DBE Goal %	FA Contracts $	DBE Prime Contract Awards Plus Subcontract Commitments $	DBE Prime Contract Awards Plus Subcontract Commitments % Achieved	Prime Contract Awards Plus Subcontract Awards No.	Prime Contract Awards Plus Subcontract Awards $
Alabama	10.0	170,483,008	21,214,212	12.4	239	21,571,575
Alaska	10.0	135,339,084	14,212,607	10.5	52	11,157,858
Arizona	10.0	170,428,708	25,808,688	15.1	117	30,117,338
Arkansas	10.0	104,241,446	11,941,999	11.5	168	15,269,852
California	13.0	521,281,556	82,704,837	15.9	1,001	77,805,598
Colorado	10.0	134,822,813	17,287,220	12.8	102	19,832,288
Connecticut	10.0	209,622,386	26,916,758	12.8	127	28,845,582
Delaware	10.0	27,096,363	3,347,210	12.4	62	3,469,842
Florida	10.0	257,516,582	31,334,528	12.2	203	12,710,489
Georgia	10.0	253,690,274	25,681,452	10.1	224	30,934,521
Hawaii	10.0	35,310,691	11,830,520	33.5	66	13,043,045
Idaho	10.0	55,958,398	8,165.781	14.6	82	8,776,842
Illinois	10.0	619,424,196	76,714,391	12.4	1,107	66,650,385
Indiana	10.0	220,768,852	26,394,083	12.0	691	26,420,232
Iowa	8.0	156,014,455	14,436,594	9.3	476	17,783,629
Kansas	10.0	170,188,231	18,954,845	11.1	302	16,971,028
Kentucky	10.0	207,777,300	26,068,628	12.5	165	27,633,507
Louisiana	10.0	161,232,063	18,703.169	11.6	116	13,336,362
Maine	10.0	53,636,371	3,055.676	5.7	107	3,972,348
Maryland	10.0	227,008,809	26,003,294	11.5	271	32,938,520
Massachusetts	10.0	109,273,039	12,125,033	11.1	80	19,795,958
Michigan	10.0	238,529,501	29,792,210	12.5	412	36,230,413
Minnesota	10.0	211,500,731	24,341,990	11.5	181	30,048,076
Mississippi	10.0	157,061,181	23,295,837	14.8	226	19,969,049
Missouri	10.0	236,243,187	29,053,514	12.3	405	33,191,881
Montana	6.0	105,550,348	7,642,993	7.2	127	12,835,366
Nebraska	10.0	111,766,367	15,497,750	13.9	158	18,857,192
Nevada	10.0	71,685,036	17,557,019	24.5	45	18,726,026
New Hampshire	5.5	56,288,725	6,330,503	11.2	82	7,073,644
New Jersey	10.0	178,056,812	22,323,945	12.5	105	11,658,509
New Mexico	10.0	87,882,754	13,072,385	14.9	135	21,799,318
New York	10.0	419,171,124	61,504,282	14.7	361	63,757,033
North Carolina	10.0	238,124,709	25,243,114	10.6	344	30,014,257
North Dakota	3.3	76,557,745	4,099,946	5.4	77	5,635,585
Ohio	10.0	476,922,095	69,370,784	14.5	660	91,416,092
Oklahoma	10.0	122,893,929	16,462.581	13.4	100	15,128,141
Oregon	10.0	109,541,119	11,472,862	10.5	172	12,040,312
Pennsylvania	10.0	579,442,015	69,296,849	12.0	332	33,255,045
Rhode Island	10.0	39,846,432	4,276,581	10.7	40	7,719,324
South Carolina	10.0	107,079,018	10,512,230	9.8	202	17,750,541
South Dakota	10.0	70,752,759	7,490,138	10.6	155	9,476,202
Tennessee	10.0	225,420,568	29,924,568	13.3	195	26,237,882
Texas	10.0	471,116,976	63,069,724	13.4	374	59,158,681
Utah	10.0	136,238,946	14,575.229	10.7	127	18,992,310
Vermont	5.5	32,886,821	2,678,920	8.1	31	3,241,907
Virginia	10.0	158,831,576	26,535,831	16.7	180	34,343,864
Washington	10.0	217,543,230	24,328,409	11.2	284	28,983,030
West Virginia	10.0	130,076,244	13,228,716	10.2	133	17,353,834
Wisconsin	10.0	130,628,025	9,840,047	7.5	670	21,339,893
Wyoming	4.5	76,614,735	3.686.318	4.8	45	5,175,971
DC	25.0	53,572,684	25,998,823	48.5	46	13,127,420
Puerto Rico	10.0	32,899,858	32,899,858	100.0	157	45,676,533
TOTAL		9,36[illegible],839,355	1,218,307.561	13.0	12.421	1,269,250.130

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